CM 334178 1942 SABOTEURS CASE TRIED BY APPOINTED MILITARY COMMISSION Vol. I OF XVIII TRANSCRIPT

5th Day

V

STENOGRAPHIC TRANSCRIPT OF PROCEEDINGS

Before the

MILITARY COMMISSION TO TRY PERSONS CHARGED WITH

OFFENSES AGAINST THE LAW OF WAR AND THE

ARTICLES OF WAR.

Washington, D. C.

Monday, July 13, 1942.

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Vol 2

C O N T E N T S .

Monday, July 13, 1942.

Name of Witness	Direct	Cross	Redirect	Recross
Norval D. Wills		601	664	672
Thomas J. Donegan	674	678		
Lieut. John Benjamin Murdock	690	692		
Duane L. Traynor	693	695	723	741

EXHIBITS

Prosecution	For Identification	In Evidence
P-99 to P-115 Photographs	664	672
P-116, P-117, P-118 Three waivers	722	723

Defendant's

A Statement of George John Dasch	602
B-1 to B-4 Letter, Dasch to Burger	624
C-1, C-2 Letter and paper attached	627

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Wilfong

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Before the

MILITARY COMMISSION TO TRY PERSONS CHARGED WITH

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Washington, D. C.

Monday, July 13, 1942.

The Military Commission appointed by the President by order dated July 2, 1942, met, in room 5235 Department of Justice, at 10 o'clock a. m., to try for offenses against the Law of War and Articles of War, the following persons: Ernest Peter Burger, George John Dasch, Herbert Haupt, Heinrich Harm Heinck, Edward John Kerling, Hermann Neubauer, Richard Quirin and Werner Thiel.

PRESENT: Members of the Military Commission, as follows:

Major General Frank R. McCoy, President,
Major General Walter S. Grant,
Major General Blanton Winship,
Major General Lorenzo D. Gasser,
Brigadier General Guy V. Henry,
Brigadier General John T. Lewis,
Brigadier General John T. Kennedy.

As Trial Judge Advocates:

Honorable Francis Biddle, Attorney General of the United States.
Major General Myron Cramer, The Judge Advocate General, U. S. Army.

Colonel F. Granville Munson,
Colonel John M. Weir,
Colonel Erwin M. Treusch,
Major William T. Thurman,
Officers of the Judge Advocate General's Department.

Oscar Cox, Assistant Solicitor General of the United States.
James H. Rowe, Jr.,
Assistant to the Attorney General.

As Provost Marshal:
Brigadier General Albert L. Cox.

As Counsel for the Accused except George John Dasch:

Colonel Cassius M. Dowell,
Colonel Kenneth Royall,
Major Lauson H. Stone,
Captain William G. Hummell.

As Counsel for the Accused George John Dasch:

Colonel Carl L. Ristine.

- - - - -

P R O C E E D I N G S

The President. The Commission is open.

Colonel Munson. All the personnel of the Commission, the prosecution, and defense, except Colonel Weir, who were present at the close of the previous session in this case, are again present; the eight accused, and the reporters are also present.

We have two new officers of the guard, sir, to whom the oath of secrecy should be administered. They are First Lieutenant D. J. Churbini and First Lieutenant Louis W. Berger.

(Addressing the officers referred to) You understand, gentlemen, that this is an oath of secrecy, and I am instructed by the Commission to inform you that violation of this oath may result in contempt proceedings or proceedings by court-martial or perhaps civil proceedings, and that in taking the oath you render yourselves liable to such penalties. You understand that?

First Lieutenant Churbini. Yes, sir.

First Lieutenant Berger. Yes, sir.

Colonel Munson. You will each raise your right hand.

Do each of you here present solemnly swear that you will not divulge the proceedings taken in this trial to anyone outside the court room until released from that obligation

by proper authority or required to do so by such proper authority?

First Lieutenant Churbini. I do.

First Lieutenant Berger. I do.

Colonel Ristine. If the Commission please, we would like to have Mr. Wills recalled for further cross-examination.

(Mr. Norval D. Wills entered the court room.)

Lieutenant Page. This witness has been sworn.

NORVAL D. WILLS,

a witness previously called and sworn for the prosecution, resumed the stand and testified further as follows:

Colonel Munson. The witness is reminded that he is still under oath.

The Witness. Yes, sir.

CROSS EXAMINATION--Resumed

Questions by Colonel Ristine:

Q Mr. Wills, I hand you a 254-page document, on the front page of which is the date June 25, 1942, with the name of George John Dasch on that page, and I believe each page is signed by Mr. Dasch, and I wish you would tell us what that document is, if you know.

A This is a statement that was signed by Defendant Dasch on June 25, 1942.

Q Is that a transcript record of the questions and answers and statements made between the investigators of the F.B.I. and Mr. Dasch between June 19 and the date it bears signature?

A As for June 19 to June 21, I cannot say as to that, but from June 21 until June 25, during the time that I was

present, it appears to be a transcript of the statements made by the defendant Dasch.

Q Were you not furnished, when you first appeared, transcript copies of the preceding days, and are not the pages that appear in that document the same as the transcript copies that were furnished to you?

A Yes, sir; they are.

Colonel Ristine. I think, in order to have the record clear, we had better have the document marked by the reporter so that you will know that this is the document that was identified by this witness.

The President. Yes. Do I understand that you are putting it in evidence, or basing questions upon it?

Colonel Ristine. I am not offering it in evidence, Mr. President.

The Attorney General. I have no objection to its being marked for identification.

(Statement of George John Dasch was marked Defendant's A for identification.)

Question by Colonel Ristine:

Q I take it, Mr. Wills, that the document marked "Defendant's A" is a full and complete transcript of the questions and answers or statements made by Defendant Dasch, which, in so far as the F.B.I. agents were able to cover it, fully covers the facts pertinent to the charges pending today against Mr. Dasch?

The Attorney General. May it please the Commission, I object, I do not want to be technical, but I do not see why the cross-examination should not be related to the examination

in chief. This material has nothing to do with it. As a matter of courtesy I did not mind having it identified; but this is not really proper cross-examination, and of course it will go on into this statement which has not been referred to. I do not think this is the proper time for the defendant to put in his own case. Therefore I think it is proper to object to the question. I do not, as I say, want to be technical about the matter, but I think the cross-examination should be related to the direct examination.

The President. Mr. Reporter, will you read the question?

(The reporter read as follows:)

"Q I take it, Mr. Wills, that the document marked 'Defendant's A' is a full and complete transcript of the questions and answers or statements made by Defendant Dasch, which, in so far as the F.B.I. agents were able to cover it, fully covers the facts pertinent to the charges pending today against Mr. Dasch?"

Colonel Ristine. May I suggest, if the Commission please, that it is a fundamental rule that if the prosecution elects to go into a part of the statements made by an accused on the basis that they constitute admissions and confessions, the defendant on cross-examination is entitled to go into any matter that transpired in connection with that interrogation and answer that has been omitted and left out by the prosecution. In other words, they are not permitted to single out parts of a statement which they claim is a confession and to deprive, in cross-examination, the other side of going into any other part for the purpose of explaining or lending greater enlightenment with respect to the isolated parts which they went into themselves.

The Attorney General. May it please the Commission, I beg to differ. This is a statement which counsel for the defendant Dasch has had and has read and is familiar with. The things that appear in this statement are not all statements made to this witness. Of course counsel for defendant is entitled to cross-examine this witness about anything that Dasch said, anything at all. The doors are wide open for counsel to ask any questions with respect to what Dasch said to the witness. But the purport of this question is very obviously for the defendant to try to get in as part of our case a self-serving statement made by Dasch, without calling him. As I say, since counsel for the defendant can cross-examine Mr. Wills about anything on earth that Dasch said to this witness--I have opened myself to that quite properly--I do not see why he should be permitted to cross-examine the witness about a self-serving statement made to a number of individuals. This witness did not take this statement and was not there while many of the statements in this confession were made. Therefore I think I am proper in insisting that this is an inappropriate and improper question, and in no sense are any of the defendant's rights kept out, because counsel has a perfectly open chance to cross-examine Mr. Wills about anything on earth that the defendant Dasch said to him.

Therefore I must object to an attempt to introduce as part of the prosecution's case a statement which is not yet relevant and which this witness did not take.

Colonel Ristine. If the Commission please, I have not offered this document in evidence as a part of the prosecution's case. I have no intention of offering that document in toto as a part of the prosecution's case. I merely want

to have the right to interrogate the circumstances under which it was taken, under which it was made, and then I want to have the right to call attention to certain things in the document which the prosecution has seen fit to ignore entirely in connection with their proof of this alleged confession.

In that connection, may I be permitted to read from page 115 of the Manual for Courts-Martial of the United States Army, which I think is the last published edition. It is the 1928 edition, and the one that was distributed here for use, in which the following appears (reading):

"Rules.--The following rules limit the use of an accused's confessions, oral or written, made out of court.

"Evidence of a confession or supposed confession cannot be restricted to evidence of only a part thereof. Where a part only is shown, the defense by cross-examination or otherwise may show the remainder so that the full and actual meaning of the confession or supposed confession may appear. For example, if in a trial for the common-law larceny of a horse the prosecution proves that the accused admitted that he broke into the stable and 'stole' the horse, the defense may show that the accused added the statement that the horse was taken solely for a temporary purpose with the intent to return it."

In this instance the witness was permitted to refresh his recollection of the statements made by reading this document or any other document that he saw fit to read. He then attempted to relate from memory various statements made, but he did not include in those statements everything that was

said. Now, we feel that under the law laid down by the Manual we have the right to cross-examine this witness with respect to any other statements that are contained in this alleged confession which they omitted to ask the witness about or which he omitted to testify about.

The Attorney General. I do not dispute that for a minute. I say that counsel can ask this witness about anything that was said to him, anything at all that was said to him. I am objecting to the particular use of this statement. Certainly he can give the witness anything he wants to refresh his recollection.

Colonel Ristine. I take it, in addition to what the Attorney General has just stated, that I have the right to read from that document and to ask the witness if those statements were not made as read and as they appear in that document, in order that this Commission may have the full story.

The Attorney General. That is my point. He is introducing this confession, which was not all made to the witness and as to some of which he has absolutely no knowledge in any way. That is exactly my point. But the confession of the defendant, who has not taken the stand, this not being the defendants' case yet, is now being put in evidence and counsel is going to read long extracts from this confession, and then, if the witness says, "No; I know nothing about that," the whole thing is already in the record. It is a very simple way of introducing the confession, the simplest way in the world. He can start at the beginning and read 254 pages and then end up by saying, "Is that a correct statement or not?" And the confession is in. I do not think that is the appropriate way to try

the case. If he will ask this witness about anything that the defendant said to him, I of course have no objection. I want it all to come out, but I want to confine this witness to what he knows. That is all.

Colonel Ristine. If the Commission please, I am not willing to trust to the memory of a witness when the life of my client is at stake,with respect to a 254-page, single-space typewritten document covering a period of four or five days. The law is laid down in the Manual for Courts-Martial that if only a part of a confession is introduced, then by cross-examination anything else that was said in connection therewith that may be in any way explanatory of what they have offered in evidence can be offered in cross-examination. That is just fundamental. If they did not want to throw the door open for us to use the document in that manner, then they had no right to offer any evidence with respect to anything that was said during that long period of examination.

The President. Colonel Royall, you are representing the other defendants involved. The Commission would be glad to hear from you now.

Colonel Royall. May it please the Commission, it is not our intention to cross-examine this witness or to participate in the cross-examination. In the first place, to do so we consider unnecessary, and, in the second place, it might have the effect of waiving the objection we have to this confession, so far as it relates to the other defendants; and of course by stipulation we still have that objection. The only questions which we have addressed to this witness were on the determination of the preliminary facts as to whether

the confession was voluntarily made; and that, of course, does not waive our rights. But as to any matters involving the substance of the confession or admissions, we do not desire to participate, for the reasons stated.

The President. If there is any further comment of enlightenment the Commission would welcome it. (No response)

The Commission is closed.

(The Commission was then closed. When it reopened the following occurred:)

Golding
fls
10:20

1b
Golding
fls
Wilgong
11:25 am

The President. The Commission is open.

The Commission is now ready to rule on the objection of the defense counsel on which the Commission has heretofore suspended ruling. The objection of the defense counsel is not sustained.

In view of this ruling are there any further remarks on the part of either side regarding the objection of the Attorney General which is now before the Commission?

The Attorney General. I withdraw my objection, Mr. President.

Colonel Royall. Do I understand that the Commission has ruled that the confession of Burger is admissible against the other defendants?

The President. Yes, that is right.

Colonel Royall. And that the admissions in the confession of Dasch are admissible against the other defendants?

The President. Yes, up to June 27th.

Colonel Royall. Yes, sir. We just wanted to make sure of that.

The Attorney General. I withdraw my objection to this question and request the reporter to read the question.

Colonel Royall. Excuse me, Mr. Attorney General.

The President. Do I understand that this general ruling also covers any other objections, motions to strike out, or as to cross-examination of any other witnesses?

Colonel Royall. May it please the Commission, in spite of the fact that the Commission has so ruled, it is still our hope that perhaps we may be able to prevail on the Commission later to reverse that ruling, which could be done. I do not intend

to argue it now, because I do not want to take up the time necessary to do so.

With that in view and also because of our firm conviction that these confessions should not be admitted against the other defendants, we still want to preserve our rights by objecting to further testimony along that line, realizing the Commission will be inclined to rule just as it does now, because we do not want to waive the position we have taken on the admissibility of these confessions, and for the same reason, in order to prevent a waiver, it will be our inclination in the case of each of these defendants for none of the defendants, except the one who is himself confessing or admitting facts, to cross-examine the witness relative thereto.

Specifically applicable to this case, it is not the desire of any of the seven defendants other than Dasch to cross-examine this witness on any matter relating to this confession.

We take that position because we are still firmly convinced, with all deference to the Commission, that the confession should not be considered as against a man who did not make it.

The President. You understand your right to call back for cross-examination any witnesses about whom you made that reservation?

Colonel Royall. I do understand.

Colonel Ristine. May it please the Commission, I believe in view of the withdrawal of the objection therewould not now be any matter before theCommission for decision.

However, a matter came up Saturday about which I would

like to clarify the situation.

When I was presenting an argument to the Commission respecting the best evidence rule, in referring to page 559, I find I made the following statement, which was my opening statement with respect to that question. I am reading now from record page 559:

"Colonel Ristine. If the Commission please, I would not say that there was an established law that where a conversation respecting a matter of this kind had been taken down stenographically and transcribed and signed the best evidence rule would apply in that instance, but I say that our sense of justice would dictate that the best evidence rule in that case should be applied, because it is perfectly obvious that the stenographic report of the questions and answers and of what was said would be far more accurate than the recollection of any witness, particularly since it covered a period of several days."

2

Now, having made that statement, I did not repeat that statement in subsequent remarks in which I urged this Commission to rule that the best evidence rule should be applied, but I want it to be made clear to this Commission that I would not and never have attempted to mislead any tribunal, whether it was a police court, a justice of the peace court, or any other tribunal, much less this Commission, as to what my understanding of the law might be.

I make that explanation, because apparently my associate counsel was under the misapprehension Saturday that I had stated to this Commission that it was the law that the best evidence rule applied in such an instance. I just want to make

it clear that that was not my contention then but it was, rather, my contention that in this particular instance, because of the attendant facts and circumstances, it should be applied.

Now, if the reporter will read the question, I understand the witness will be permitted to answer.

The Reporter (reading):

"Question. I take it, Mr. Wills, that the document marked Defendant A is a full and complete transcript of the questions and answers or statements made by defendant Dasch which, insofar as the F. B. I. Agents were able to cover it, fully covers the facts pertinent to the charges pending today against Mr. Dasch."

A The statement that was just shown to me and signed by defendant Dasch is a transcript of the remarks taken by the stenographer and signed by him, but whether that includes every word said by him that I cannot say, because I did not take the stenographic notes.

Questions by Colonel Ristine:

Q Insofar as the Federal Agents were able to develop all the facts and circumstances surrounding this matter, it does fully cover it, does it not?

A There were certain or some, rather, explanatory remarks made by defendant Dasch that are not included in that statement.

Q Would you tell me why anything was eliminated or deleted or left out of that statement?

A One that I have in mind, one particular matter, in describing the submarine he drew certain charts there. Those

are not put in the statement.

Q Well, those are in the possession of the F.B.I., are they not?

A That I could not say. I do not know what happened to those after they were drawn.

Q Is that the only thing that you have in mind, the drawings that he made of the submarine?

A Well, there was another instance that I recall that is not in the statement. It was relating to a colonel that had come from Russia, a Russian colonel that had been captured and his hands were put over candles and burned so that they could get information. I do not recall that that is in the statement.

Q Was there any reason why it should be left out of the statement?

A None that I know of.

Q I take it the transcript of what occurred before you joined the group was read by you in order to bring you up to date, was it not?

A Yes, sir. I read the transcript from the period that the stenographic notes were first taken until I appeared and participated in the questioning of Dasch.

Q And from the time you appeared and participated, from then on you heard the questions and answers, did you not?

A Yes, sir, I did.

Q And you do know what is in this document marked Defendant A, do you not?

A Yes, sir, I know what is in that document.

Q Then would not you say that it was a full and complete

document respecting Dasch's knowledge of the matters that are now on trial before thistribunal?

A I would say that that is a transcript of the remarks made by the defendant Dasch.

Q Well, you would not contend that your Department asked Dasch to sign this statement before your Department was satisfied it was full and complete, would you?

A He was asked to sign that statement after he had stated that all of the facts as he recalled them had been given by him.

Q And, I take it, none of those whowere interrogating him could think of any other questions to ask him, is that correct?

A There were a lot of detail questions that could be asked him.

Q Well, you did not feel that it was necessary to ask any further questions in order to develop the matter, did you?

A No, sir, I never had that feeling. There are a lot of questions that can be asked him.

Q Did you have that feeling when you stopped asking him questions, after four or five days?

A Yes, sir, I had that feeling when the questioning ceased; when he began reading that statement, I had the feeling that there were other questions that could be asked him and should be asked him.

Q Why didn't you ask him? There was not anybody who prevented you from asking him, was there?

A We had hoped at a later time we would be able to ask those questions.

Q Was there anybody who prevented you from asking those further questions at that time?

A At that time we were getting ready to go to New York, and we left Washington on Thursday, June the 25th, at 1 o'clock. At 1:30 we got on the train.

Q And how long had you and the other F.B.I. Agents interrogated Mr. Dasch in order to develop fully all of the facts connected with this matter?

A As I have stated before, I first saw the defendant Dasch on Junethe 21st and he was questioned here in room 2250 of the Federal Bureau of Investigation each day until June the 24th, at which time he started reading this statement.

Q Was not that at the request of the agents that he started reading it?

A Oh, yes, sir.

Q And there was not anything to prevent the agents from asking further questions before they made that request, if they so desired, was there?

A At that time we were to leave the next day for New York, it was quite a lengthy statement and he could not just pick the statement up and read it the last minute, and we wanted him to read that statement, to be sure that it was correct.

Q Was there any reason why he should sign it then, as distinguished from a subsequent date?

A No particular reason.

Q At the time these interrogations occurred and as recorded in the document Defendant A, Mr. Dasch was in what kind of custody of the F.B.I.? Did I understand the Attorney

General to describe it as protective custody?

A What was that period of time, may I ask?

Q During the interrogation of Dasch as recorded in this document.

A From the time that I first saw him and during the period that he was giving that information, until the time that he signed the statement, he was in protective custody.

Q You know that at the time the others interrogated him preceding your entry that he was also in protective custody, do you not?

A That would be an assumption on my part, yes, sir.

Q You know it to be true, that there was no change made in the nature of his protective custody from the time he first appeared until after this document was signed?

A Well, as I say, I would assume that, yes, sir.

Q Now, protective custody, I take it, is a voluntary custody on the part of Mr. Dasch; that is correct, is it not?

A Yes, sir.

Q And that kind of a custody springs from the fact that somebody thinks it is necessary for the protection of Mr.Dasch, is that correct?

A That is correct.

Q Now, Mr. Dasch did give in his statements and answers to your interrogations valuable evidence which helped the F.B.I. in the apprehension of the other seven defendants in this case, did he not?

The Attorney General. May I--

A Yes, sir.

The Attorney General. Well, that is all right, but I

don't see why this statement should be made and the witness should be asked to make a conclusion of that kind.

Attig fls
11:45

ol
Attig
fls.
Gold.
11:45
7/13

Question by Colonel Ristine:

Q Your answer was "Yes, sir"?

Colonel Royall. As to that item, which does not involve a matter of confession, the other defendants object on an additional ground that any conclusion the witness might make as to the examination of the others on the information would not be admissible as against the other defendants.

The Attorney General. Since I did not get my objection in in time, I now move to strike.

Colonel Ristine. If the Commission please, it seems obvious to me that by the calling of numerous witnesses from the F.B.I., whose names I do not even now know, I can develop that fact. Of course, if the Attorney General and the other counsel desire to be technical about the matter and require me to call in some ten or twelve or fifteen F.B.I. agents in order to find the right man who knows the answer to the right question, there is nothing I can do about it; but I should think that it would be a matter about which there should not be any controversy among ourselves. I do feel that it is essential to have it in the record in order to present the true picture of this situation to this Commission, so far as my client is concerned.

Here is a man who was in the protective custody of the F.B.I., and for days he gave them information, gave them facts, told them all about these two groups and anything else that they interrogated him about, and was in every way possible cooperating with them. Of course, if the Commission please, those are matters about which you should be fully informed in order to place the proper interpretation on the part or participation which this defendant may have taken in this matter.

o2 The Attorney General. I should very strongly object to it. Colonel Ristine seems to have misapprehended the basis of my objection. This witness knows as much about the matter as any other witness and is as capable of answering the question--as he did answer it--as anybody else in the F.B.I.

My objection is that it is hardly proper for Colonel Ristine to ask the opinion of one of our witnesses about a matter that is not a fact but is a conclusion, which, of course, the Commission will make itself. I do feel very strongly about it, and I move to strike it out.

Colonel Royall. We have our motion on behalf of the other defendants to strike that conclusion of the witness.

The President. The Commission sustains the objection of the Attorney General and of the defense counsel representing the other defendants.

Questions by Colonel Ristine:

Q Following the information which Mr. Dasch gave respecting the other members of those now on trial, what action was taken by you or by any other member of the F.B.I., that you know about, toward the apprehension of the other seven members now being tried?

A I took no action. The other action I do not know.

Q Was any action taken in your presence?

A No action was taken in my presence.

Q Do you know whether following that information the F.B.I. agents went to New York and apprehended Mr. Burger?

The Attorney General. He said he did not know what action was taken. Is not that enough? He said he did not know.

Colonel Ristine. My question was specific.

A Member. That will not make any difference.

03

The Attorney General. All right.

A Member. If he knows, all right; if he does not know, all right.

The President. That is the ruling on this particular question. In other words, develop your question as you wish.

Colonel Ristine. Will the reporter read the question?

The Reporter (reading):

"Question. Do you know whether following that information the F.B.I. agents went to New York and apprehended Mr. Burger?"

The Witness. I was told--

The Attorney General. I object to anything you were told; just answer of your own knowledge.

Questions by the President:

Q Answer the question as to your own knowledge, please.

A Well, sir, I never saw the defendant Burger until after June 25, and any information I have concerning the defendant Burger was told to me.

Q In other words, hearsay?

A Yes, sir.

Questions by Colonel Ristine:

Q Were any of the other seven in custody at the time Mr. Dasch appeared the first time at the offices of the F.B.I.?

A Do you mean in Washington?

Q Anywhere. Was not the appearance of Mr. Dasch the first knowledge the F.B.I. had respecting the whereabouts of any of the group of eight?

A Any information I would have on that, sir, would be hearsay.

04

Q Would you tell me who in the F.B.I. would have that information and the other information I have asked you about heretofore?

The Attorney General. Perhaps I can save time. It was spread on the record Saturday and a copy given to counsel as to exactly the day on which each defendant was apprehended. It is all in the record now.

The President. Is that in the record?

The Attorney General. It is already in the record, and we are looking for the page. We will admit exactly when each one was apprehended.

Colonel Royall. Page 476.

Colonel Ristine. If the Commission please, this memorandum is headed "Re time of apprehension of subjects," and under "No. 1," there is: "George John Dasch, 10:30 a.m., protective custody, 6/24/42. 8 p. m. actual arrest."

Questions by Colonel Ristine:

Q May I inquire of this witness if any notice or statement was made to Mr. Dasch on 6/24/42 that there was any change in the status of his custody?

A At that time I was not present in the room.

Q Well, you know from conversations that you had with him later that he had no knowledge or information about any change in custody, do you not?

A Well, the next day, sir, the property that he had was taken by us.

Q The next day?

A Yes, sir; the next morning.

Q By "the property," what do you mean?

A His personal property--the money.

05

Q Did you participate in the taking of that personal property?

A Yes, sir, I did.

Q Did you or anybody in your presence make any statement to him as to why you were taking it?

A Not that I recall.

Q There was no statement made that there was any change in the status of his custody at that time, was there?

A Yes, sir.

Q Made by whom?

A He knew at that time that he was going to New York.

Q Well, obviously; he had signed a waiver, had he not?

A I was not present at the signing of that waiver.

Q But there was no statement made by you or any other F.B.I. man in your presence before the trip to New York about the change of his custodial status, was there?

A I made no such statement. I do not recall any such statement.

Q Do you not know, as a matter of fact, that Dasch requested that he be placed in the cells with the other defendants who had been apprehended up to that time? You know that, do you not?

A Yes, sir; that was on Thursday, I believe.

Q What was the date?

A June 25.

Q Then, you do know that at that time he did not know that there had been any change whatever in his custodial status, do you not?

A Well, at that time, as I recall, it was pointed out

o6 to him that he could not be turned loose.

Q What was the language used, if you recall?

A Special Agent Traynor was talking, and he at that time told the defendant Dasch that we had two things to consider: first, defensive; that is, to take care of the saboteurs, espions, and others who were here to hinder the war effort; and to protect this country from additional persons coming over.

With that thought in mind, and I think also at that time, he brought up the family of Dasch that was in Germany.

Colonel Royall. May it please the Commission, so much of the witness' answer up to this point as embraces statements made by the F.B.I. agent, which I do not think is quite responsive to the question--but whether it is or not, it was not anticipated when the question was asked and could not have been so anticipated--the other seven defendants move to strike, so far as it concerns them.

A Member. I think counsel might as well go ahead with his questions and answers.

Colonel Royall. May it please the Commission, may I say this further: I do not want to be interrupting this examination, and I have sought not to do so, because it is not conducive to a clear understanding of what is going on--

The President. On the contrary, I think it is.

Colonel Royall. I was going to suggest that in connection with any statements made by Dasch, it is the intention and purpose of the other defendants to object, so far as it relates to the other defendants. That is consistent with the position we have taken, and it will be necessary for us to con-

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tinue those objections. In view of the present ruling of the Commission, some question might arise as to whether our former stipulation would apply to those objections. We would be perfectly willing to have it do so, or we would be willing to object to each question asked this witness with reference to Dasch's statement and would follow the wishes of the Commission in that connection.

The President. I think that Colonel Ristine, representing Dasch, may go ahead with his questions. When he finishes, you may, if you wish, make a covering stipulation that will be considered.

The Attorney General. I agree to that suggestion.

Questions by Colonel Ristine:

Q I hand you a photostatic copy of a document dated June 22, 1942, and will ask you to look at that.

Colonel Ristine. First, I shall have it marked.

(Photostatic copy of letter written by defendant Dasch to defendant Burger and photostatic pages attached were marked as Defendants' Exhibits B-1 to B-4, inclusive, for identification.)

Questions by Colonel Ristine:

Q I now hand you a document marked as Defendants' Exhibits B-1 to B-4, inclusive, and will ask you to state, if you can, what that document is.

A This appears to be a photostat of a letter written by the defendant Dasch and directed to Peter Ernest Burger, Room 1421 Governor Clinton Hotel, New York City.

Q That letter was delivered to whom for mailing?

A It was turned over to Special Agent Johnstone.

Q You and Johnstone at that time, I believe, were

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engaged in the interrogation of Mr. Dasch?

A On that date, yes, sir.

Colonel Ristine. May I have the original, so as to clear up whether there is any doubt about its being a photostat of the original?

(The Attorney General handed papers to Colonel Ristine.)

Question by Colonel Ristine:

Q I hand you the original document and ask you to compare it and ascertain if it is a correct photostat of the original.

The Attorney General. That is conceded.

The Witness. This appears to be.

Colonel Ristine. I just did not like to leave it in that indefinite form. If the prosecution will agree that that is a photostatic copy--

The Attorney General. Yes, we gave it to you.

Colonel Ristine. All right, then; that was not in the record.

Questions by Colonel Ristine:

Q Did Mr. Dasch request of you, or of anyone in your presence, permission to write this letter to Burger?

A Oh, no, he didn't request permission to write the letter, no, sir--not of me. Did you ask "in my presence"?

Q Yes, or in your presence.

A Prior to the time we left the office, he made mention of the fact that he wanted to write a letter.

The President. There is a request by the Commission to give the date, please.

Colonel Ristine. June 22, 1942.

09

Questions by Colonel Ristine:

Q Was that the date of the letter?

A That is correct. That was on a Monday.

Special Agent Traynor told him it would be all right to write a letter provided we read the--that is, Johnstone would read the letter to see that nothing of any import was in the letter.

Q Was the letter delivered in an envelope addressed to Burger and sealed for mailing?

A At the time I saw the letter there was no envelope with it.

Q Did you know that later it was delivered in an envelope addressed to Mr. Peter Ernest Burger, Room 1421 Hotel Governor Clinton, New York City?

A The defendant Dasch never sealed that letter.

Q Did he deliver it to you or to someone in your presence for the purpose of reading it and then sealing and mailing it?

A Yes, sir, he did.

Q Was it ever mailed?

A No, sir.

Q Is that customary where a person is in protective custody?

The Attorney General. I object. I do not think custom has anything to do with this. The question was simply, Was the letter mailed? and the answer was, No. I object to what is usual or customary about mailing letters.

Colonel Ristine. I will withdraw the question, if the Commission please.

o10 I will ask to have these documents marked.

(A letter and paper attached were marked as Defendants' Exhibits C-1 and C-2, respectively, for identification.)

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Questions by Colonel Ristine:

Q I now hand you documents marked Defendant C, Defendant C-1 and Defendant C-2; Defendant C-1 consisting of two pages stapled together, and Defendant C-2, consisting of the same number of pages, stapled together, and I will ask you to state what that is.

The President. May I ask, on behalf of the Commission, whether the other letter which you had reference to has been put in the record?

The Attorney General. No; it has not been offered, and could not be offered now by counsel for the defense. It has not been offered by me.

Colonel Ristine. As I understand it, Mr. President, it would be inappropriate now for me to offer in evidence the documents I am exhibiting.

The President. It is being exhibited simply as an aide - memoire to the witness, is it?

Colonel Ristine. I am having it identified now so that later, when we offer evidence for the defense, it will not require the recalling of the witness.

The President. I see.

A It appears to be a photograph of a letter directed by George Dasch--

The Attorney General. Now, may I just say this. We know that it is a photograph of a letter. Will you simply say whether or not you have any personal knowledge of it?

The Witness. I never saw this letter before.

Colonel Ristine. In view of your admission that this is a photostatic copy--

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The Attorney General. That is a correct photostatic copy of what it purports to represent.

Colonel Ristine. By that do I understand that you would like to have me recall or place upon the stand some other F.B.I. agent in order to identify it?

The Attorney General. No. I do not wish to make any suggestion to you in trying your case. I simply agree that it is a photograph of a letter which this witness knows nothing about. I hope that we can go on with this witness.

Questions by Colonel Ristine:

Q I just discovered that the document marked Defendant B-3 seems to have the notation on the back of the envelope of something written in longhand. Will you tell me whose initials and, if you know the handwriting, who wrote the notation on there?

A Yes, sir. The initials "F. G. J." with the date "6/25/42", which also is the date "Placed in exhibit envelope of Dasch by Bureau just prior to trial on 7/7/42, F. G. J."

Those are the initials of Special Agent Frank G. Johnstone.

Q Was that writing placed on there in your presence?

A No, sir. That was discovery to me, also, that writing.

Q Was there any trial on the date 7/7/42?

A I don't know how he arrived at that date, sir. As I say, that is the first time that I have seen that writing.

Q In the course of the interrogation of Dasch he went into great and minute detail respecting the construction,

3w

workings, and operation of the submarine that he came over on, did he not, in answering questions asked him?

A Not knowing anything about a submarine, sir, I could not say how much detail he went into the matter. But he did discuss it at some length.

Q Did he make drawings of the various floors of the submarine?

A Yes, sir.

Q Did he tell you that he had managed to get into the control room and the radio room and other restricted parts of the submarine?

A Well, I recall the radio room and the control room; yes, sir.

Q And he gave you, in so far as he could, all the details and the information that he learned in those restricted places, did he not?

A I could not say that he gave all that he learned, but he stated that he would give what he could about it.

Q He appeared, at least, to give everything that he had any knowledge about, did he not?

A If you mean by that that he answered all the questions that were asked him; yes, sir.

Q As a matter of fact, during this entire interrogation from June 19 to June 25, inclusive, Dasch was doing everything he could to aid and assist the Government of this country, was he not?

The Attorney General. Now, I object, may it please the Commission. I think the objection is so obvious that I will not even state the reasons for it.

The President. Objection sustained.

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Questions by Colonel Ristine:

Q He promptly and without reservation, and cheerfully, answered all questions propounded to him respecting any subject that had to do with the safety and welfare of the United States; is that correct?

The Attorney General. That is exactly the same thing--putting words into the mouth of the witness, "without reservation." What does he know about Dasch's reservation?

The President. Objection sustained.

Questions by Colonel Ristine:

Q Do you remember that he told you about a supposed third group that was due to come over from Germany and land on the Atlantic coast?

A Yes, sir; he did mention a third group that was to come over.

Q Did the agents ask him in particular about the matter, and did he freely answer about it?

A He answered all questions that were asked him concerning this third group.

Q Did he give information respecting proposed sabotage of the Panama Canal, in so far as Germany was concerned?

A Yes, sir. I recall a mention of the Panama Canal.

Q Did he give information which he had learned in Germany respecting the intentions of the German High Command to sabotage that Canal?

A As I recall it, that was a conclusion on his part.

Q Did he state, in the course of that interrogation, that "For the last 15 years I have been opposed to the Nazi movement in principle, in 1920 as well as in 1931. When I

5w

was in Europe I had ample opportunity to study that movement and to convince myself who were its followers. Its followers were the old militarists and super-nationalists who had brought my country into the war in 1914. I followed the rise of Hitler into power with special interest. When his party in the elections of 1932 gained over 100 representatives in the Reichstag I, to my sorrow, knew that he would succeed. I base his success at that time on the very fact that the German people, after having given their confidence to various parties with all kinds of political beliefs, have not been able to bring the German masses out of the morass in which they found themselves. Hitler not only impressed upon the basic educated mind of the German people the theory of military might, but was clever enough to promise them a new era of social happiness. The very fact that the German people have suffered and by suffering are politically educated proved to be the success of Hitler's cause, for he had not only the down-and-out people to work with, but also the people of political understanding. His job was to direct that political knowledge of the German people to his advantage, which he was very successful in doing. I discussed my political beliefs about Hitler while I was here with various people, among them my brother, Ernest Dasch, who resides out in Astoria, Long Island. In 1936 he went to Germany with his wife. On his return he praised conditions in Germany and in his own way gave credit to Hitler. My reason was contrary to his, though, and we had an argument. He threw me out of his house and asked me never to return until I had changed my opinion about Hitler. When my mother finally came to this country to pay us a visit I had ample opportunity to get some real facts, for I knew

6w that my mother who had been before the rise of Hitler active as a social worker of the Socialist Party would have a thorough understanding of the real facts. To my surprise, my own mother even praised the work of Hitler. She told me that the workers and the farmers were protected under new laws and that living conditions in general had risen and that the country and the people in general were very happy.

"After my mother had told me all these facts, which I had to believe because my mother told them to me, I took stock of my own way of reasoning. I said to myself that perhaps I had been wrong all along about Hitler. Perhaps I had a prejudiced mind that had been closed to the truth.

"In 1938 I had a chance to study the tactics"--

The Attorney General. May I interrupt just a moment? This is so long that perhaps you would be willing to ask the witness at the end of each paragraph whether he heard him say this. It is a little bit difficult for him to remember all this long statement.

Colonel Ristine. I do not object to that.

Questions by Colonel Ristine:

Q Would you state, in so far as I have read, whether Mr. Dasch did make those statements to the F.B.I. in the course of this interrogation?

A In my presence?

Q Well, in your presence or in the presence of those who were interrogating him.

The Attorney General. I object to that. It must be confined to the presence of the witness. The question is whether the statement was made in the presence of other

7w

persons when he was not there. Of course I object to that.

The President. Possibly you can reframe your question to cover the particular suggestion as regards the length of the reading.

Colonel Ristine. If the Commission please, in view of the fact that this document has been identified by this witness as containing the transcribed questions and answers and statements during the course of this examination, five days of interrogation, I believe, under the rules laid down in the Manual for Courts-Martial, we would have the privilege of reading to the Commission such parts as have not been previously testified to by this witness, as throwing light upon the subject. I would offer it in that form, and if the witness could not verify the fact that it is a part of this statement with which he was familiar and which contains the signature of Mr. Dasch on each page, I would offer it just as an authenticated, correct transcript of a transaction of which only a part has been given in evidence.

The Attorney General. We are not concerned now with the offer. You asked this witness what he heard Dasch say to personswhen he was not present. If you confine it first at least to what this witness heard, then we can discover if he heard it. If he heard it, I have no objection, of course.

Questions by Colonel Ristine:

Q Were you present when that statement was made by Mr. Dasch?

A No, sir; I was not present.

Golding
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Colonel Ristine. If the Commission please, we offer it, notwithstanding, as being a correct reading of the document which has been identified by this witness as containing the transcript of the questions and answers asked both before the time he entered the picture as well as following the time he entered the picture.

The Attorney General. I do not understand. Are you making an offer or asking a question? I was not clear as to what you said.

Colonel Ristine. I am offering it.

The Attorney General. You are now making an offer?

Colonel Ristine. I am offering it in evidence as a statement made by Dasch contemporaneously and as a part of the various matters which this witness previously testified he said, but in addition to what this witness has previously testified Mr. Dasch said.

The Attorney General. Of course, this is not the appropriate time for defendant counsel to make any offer. He is cross-examining my witness now, in the midst of which cross-examination he proposes to interrupt it and begin the introduction of his case by offering one of these exhibits. I object to that. It is not his case. When the time comes for him to introduce evidence, the question of what should go in will arise, and the Commissbn will then rule on it.

Colonel Ristine. If the Commission please, we should not be required to permit the prosecution to introduce isolated statements made in the course of four or five days of interrogation and then wait for four or five days before we furnish to this Commission the explanatory statements that were made

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simultaneously therewith and which it is necessary for the Commission to be familiar with in order to properly evaluate and understand the other statements about which the prosecution has brought out evidence.

The Manual of Courts-Martial under the heading "Rules.- The following rules limit the use of an accused's confessions, oral or written, made out of court," has a rule that limits their right to use a confession at all, and here is what it says:

> "Evidence of a confession or supposed confession cannot be restricted to evidence of only a part thereof."

Now, that is a rule laid down against their side.

> "Where a part only is shown, the defense by cross-examination or otherwise may show the remainder so that the full and actual meaning of the confession or supposed confession may appear."

I submit that if I am unable to show it by cross-examination of the witness, then I am authorized to read it from a document which has previously been identified by the witness and which has previously been signed by Dasch. That is what the rule says, that we may put in the rest where a part only is shown:

> "Where a part only is shown, the defense by cross-examination or otherwise may show the remainder so that the full and actual meaning of the confession or supposed confession may appear."

It would be obviously unfair to this defendant to only

introduce segregated parts of the document and at the same time not give the Commission the benefit of the other parts which are explanatory and which are necessary in order to have a correct interpretation of that part only that was introduced by the prosecution.

It just puts an undue burden, it just does away with the presumption of evidence, it does away with the rule that if you only introduce a part of a confession that the other side at that time may introduce the rest of it. It says "by cross-examination or otherwise." It does not contemplate that we later have to come in as a part of the defense and offer it. It can be done right then. The reason is obvious.

Now, they say here further that confessions are received with great caution. They are received by all tribunals with great caution.

We just feel, obviously, that it would be unfair to leave the impression as painted by the prosecution in their limited introduction of evidence without our at the same time having an opportunity to put in the rest of it that is necessary to a proper understanding.

The Attorney General. Now, the answer is very simple to this, it seems to me, and I think I can state it fairly clearly.

Two things have been suggested by Colonel Ristine. On one of them the Commission has already ruled. That was when the Commission permitted this witness totestify what he heard Dasch say to him up to June 27th, irrespective of the existence of this long confession. That has been ruled on. That is out of the way.

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Now then, having ruled on that, the witness is now asked to testify what the defendant Dasch said to someone else when he was not there, under cross-examination, on the theory that it is part of a confession not now in evidence.

Of course, what a court martial--leaving out the distinction between an oral and written confession--is that it means that when someone hears a confession, that person must give the whole thing.

I have no objection to this witness' giving the whole confession that came to him. That is the only confession he knows anything about. He is, of course, permitted to say anything about what Dasch said to him, because that is Dasch's confession to him, and he knows about it. I think it is preposterous to ask this witness about something that he has absolutely no knowledge of.

It is now 12:30. The Commission might wish to have a recess at this time. I just wanted to point out the fact.

The President. The Commission will adjourn until 2:00 o'clock.

The Attorney General. The last time you suggested we might adjourn for one hour. Would you consider the possibility of adjourning for only an hour instead of an hour and a half at this time?

The President. Yes, unless there is some reason, as stated before, by the defense, why they desired more time.

Colonel Ristine. If the Commissidn please, there are some witnesses who appeared this morning for the first time that I would like very much to talk to. We would like to work it in during the recess, but I will not insist on it, if the Commis-

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sion desires to take a shorter time. I will see them after adjournment this evening in that event.

The President. I would like to not waste any time, but I am conscious of the fact that the defense possibly has not had the opportunity up to now to have quite the time they may need.

The Attorney General. That is true, and I--

The President (interposing). I was hoping that we just would not waste any time, and for that reason I was accepting the hour's adjournment.

Colonel Ristine. If it please the Commission, let us go for an hour and I will make arrangements to see the witnesses later this evening.

The President. Very well. The adjournment will be until 1:30.

(At 12:35 o'clock p.m., a recess was taken until 1:30 o'clock p.m. of the same date.)

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A F T E R R E C E S S

(The Commission reconvened at 1:30 o'clock p. m., upon the expiration of the recess.)

The President. The Commission is open.

Colonel Munson. The personnel of the Commission, of the prosecution except Mr. Rowe, and of the defense; all eight of the accused; and also the reporter are present as they were at the close of the last session.

The witness is reminded that he is still under oath.

The Witness. Yes, sir.

NORVAL D. WILLS

the witness on the stand at the time of the noon recess, resumed the stand, and having been previously duly sworn, testified further as follows:

The President. Do I understand that there is an objection before the Commission?

Colonel Ristine. Yes, sir, there is an objection.

The President. You have asked a question, I believe, and it was objected to by the Attorney General?

Colonel Ristine. I think it did not come up in that form.

The President. Will you please state your recollection?

Colonel Ristine. After reading, I think, three paragraphs from pages 8 and 9 of defendants' exhibit A, which was identified as the signed statement of Dasch, the question was asked the witness if those statements were made in his presence. He said that they were not but that they were made before he appeared as one of the interrogators.

I then offered that as statements made by Dasch in connection with the testimony that this witness had previously

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given and in which he related parts such as he had selected himself, on the theory that it would be explanatory of and would be necessary for the Commission to have a proper understanding of the witness' previous testimony.

The President. Yes, I remember the discussion now.

Colonel Ristine. I may say, if the Commission would permit me, that I do not contemplate reading any large part of these 254 pages in the presentation, but only just such limited parts as I think would be helpful to the Commission in properly interpreting the previous testimony.

The President. I take it, then, that the witness has answered the question?

Colonel Ristine. Yes, sir, he answered the first question, but the matter is still before the Commission on my offer of that as being a part of the questions, answers, and statements that took place at the same time.

The President. Have you anything further, Mr. Attorney General?

The Attorney General. Nothing further, Mr. President.

The President. Subject to an objection on the part of any member of the Commission, the ruling is that the objection is sustained.

Question by Colonel Ristine:

Q Mr. Wills, I will now ask you to state if Mr. Dasch did not make the following statement in your presence and hearing. I am reading from page 82, and it runs over onto page 83.

The President. Is it your intention to show that to the witness or to read it to him?

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The Attorney General. I should prefer to have counsel show it to the witness.

Colonel Ristine. As a preliminary to reading it?

The Attorney General. Yes.

Colonel Ristine. I think the witness understands that it is what occurred after he was present. He had previously advised me of the page number.

The Attorney General. I think you are mistaken. Ask him.

(Colonel Ristine handed a document to the witness.)

Question by Colonel Ristine:

Q You were present when those statements were made?

The Attorney General. On what pages?

Colonel Ristine. Pages 82 and 83, or whatever pages I mentioned.

The President. Will you show the witness what you have reference to?

Colonel Ristine. Yes.

Questions by Colonel Ristine:

Q I believe you told me that you appeared from page 81 and thereafter?

A That is correct.

Q I was starting to read from page 82. Continuing again:

"When I approached Kappe I told him that I was not satisfied with my job as it did not satisfy my ideals. I told him I came to Germany to do my duty to the fullest extent and I felt like I was a slacker since I had a beautiful and easy job while the soldiers were out there fighting. I told him I wanted to do

04 something big. He told me I could become a soldier, and I suggested I would like to be used against England as a parachute trooper. I suggested this because I wanted to find a way to get out of the country. Kappe told me right then and there that I spoke a beautiful language and it was all very nice for me to desire to do my duty but I would have to risk my life to do that. I told him that was what I wanted and was looking for. I knew all the while why they were there. When he approached me that day it was the first time I had seen him since I left him on June 2. He asked me if I liked my job and if I was satisfied. That was in August and at that time I already had the desire to get going and to do something. I was just in the early stages where I saw what a rotten setup it was, so I told him I was not happy and he asked me why not. I said there was political graft going on, but I did not say anything else because that was the first time I had been in the setup. That night I met Lord Haw-Haw. He made a 7.7 speech about the Fuehrer and I took it all in.

"This was not in August because at that time I was with the little Holland girl whom I met and who helped to formulate my decision to do more work because she told me about the sorrows of her people during the bombardment of Rotterdam. I think it must have been at the end of September and not in August when I met Kappe the first time. At that time this so-called plan had not developed. Dempsey had

already been taken off the job there and had previously gone through the school because when he came with us to the school he said that he had been through it before and had been on the way over to America but had only gotten as far as Bordeaux. I did not ask him why he didn't go on as I figured it was none of my business. The main thing was to cover my steps and get going. As obstacles came up I had to find a way around, over or under them. I was very careful what I said so that at no time they could get wise to me, especially the captain. He looked me over closely. They must have had all kinds of records on me. They knew that I served as a boy in the Army and that I had expressed my desire to help my country as a boy. They also knew that I knew Rheinhold Barth who married my cousin, Friedel Dasch, daughter of my father's brother. I talked a lot with Barth who was an idealistic Nazi. I gave him a lot of talk about my duty, my desire to fight, and my willingness to die for my country. He went to Kappe and told him all this and told him I was all right and that he would vouch for me. When I first approached the G-1 Agent I had given Kappe as a reference. He told me that he thought Kappe wished to see me. Kappe knew that I had made an application with G-1. Barth knew exactly and we used to go out together and I confided in him that I was willing to do something big. He said Kappe told him over the phone that he wanted to use me. I therefore had two fellows interested in me and one or the other would show me a way."

o6 Did he make that statement in your presence?

A I recall the gist of that statement, but word for word, of course, I do not recall.

Q Assuming that it read it correctly from this document, you would say that it was made in your presence, would you not?

A Yes, sir.

Q I wish you would state if during the course of that interrogation Mr. Dasch was asked the following questions and made the following answers. I am starting to read from the bottom of page 188, continuing over to page 189:

"Question. Did you ever know or meet anyone in the German High Command whose duties dealt with espionage?

"Answer. Yes, sir.

"Question. Who were they?

"Answer. I met in January, when I sat in the office, Room 1025, with Lieutenant Kappe, I was introduced to one person who was, to my way of reasoning, an engineer. He was in civilian clothes and had just returned from Russia. And he told us, the three, Lieutenant Kappe and myself and this man, his experiences from the Russian front. He told us how clever the Russians had underminded the City of Kiev, where they exploded many buildings in which divisional headquarters and other branches of the military, were blown up on the air many weeks after the Germans had it occupied. He explained there in which ingenious way the Russians had prepared this work. I could not follow his explanation to appoint for the fact that I don't know

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nothing about electricity or radio but I gathered that the Russian control that whole setup by radio. He said that when those buildings and sections in Kiev were blown up the Germans drove all the Jewish population of Kiev together and executed 35,000 the number of Jews being executed. I happened to see what he marked down. This number refreshed in my mind a message I received over the radio from a Russian station which I had listened to only a few nights previous to that date where it was claimed from Russia's side that the Germans had executed 30,000 Jews. This intelligence officer said that the Russian Jews were killed or executed by members of the SS. He happened to see with his own eyes that the Jews were banded in groups of 2 and 3 hundred people; had to dig their own graves (big holes); had to walk towards that hole where officers of the SS were shooting them in the back of the head in tne neck and kicking them down in the hole. He even laughingly remarked that the trigger finger of the executing officers became tired and they had to be for that reason replaced by another officer. I sat there on my little chair in the corner, my stomach turned. I didn't know just what to do for a moment. I thought they were the dirtiest bastards on earth. They were just damn bastards, any men can do that. He even said another story. He stated the following, "A dirty old Jewess sat on the road near the dead body of a young Jew woman who happened to be her daughter and she refused to leave that dead body of the daughter and the only way they could get that

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woman away was shooting her right there in the place."

"Question. Do you know the name of this individual?

"Answer. No, I don't but I was introduced. After this fellow had left, he went to the next room, I said to Lieutenant Kappe, 'Christ sake this is an awful war and this is an awful way to kill people.' and he said to me, 'What kind of a Dutchman are you? We Germans have one thing to kill all the Jews and don't you get so chicken hearted.' I made a mistake that day. I couldn't help myself."

Did he make that statement?

A The gist of that statement I recall.

Q If I correctly read it from the exhibit, he made it in that language, did he not?

A Word for word, I couldn't say.

(Mr. Rowe entered the hearing room.)

Questions by Colonel Ristine:

Q I will ask you to state if in the course of that examination the following questions and answers occurred. I am not reading from page 213.

"Question. George, maybe I can help you with this by asking a few questions and getting responses to them. What programs have you listened to continuously in the past six months?

"Answer. I did not listen to any specific program one way or the other. I listened to numerous programs coming out of America over Stations WGEO, Schenectady, and also from RCA, New York; WBOX, New York; WLWO,

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Cincinnati. I also listened to a number of broadcasts from WRL from the World's Radio University in Boston. Many of the comments had to some extent valuable and very good points which to my way of reasoning fell on very good ground - ground which is being made fruitful every day as long as this war continues and becomes more severe.

"Question. Next, let us get in here a little bit about your specific job. Were you supposed to work certain hours and listen to certain radio programs?

"Answer. That is right. I did over there.

"Question. Were these all propaganda?

"Answer. Everything - yes.

"Question. Let us get just your job. Tell us when you started to work, when you quit work, what you were supposed to do during that time?

"Answer. I worked on three different shifts six days a week, alternating every week on a new shift. The morning shift began at seven in the morning until two in the afternoon. The afternoon shift was from two o'clock until nine at night, and the night shift from ten o'clock to six in the morning. During all this time I was given a number of radio transmissions sent from various American radio stations to translate into German script. During the afternoon watch at two o'clock I also had to receive the commentators from either NBC as well as CBS in London, Stockholm, Berne, Vichy, Cairo, and until a few months back, Singapore and San Francisco. At night I had to take these for

o10 NBC as well as CBS and the New York times, and all the transmission coming out of Ankara and from Martin Agransky (?) and Sultsberger (?) who were the usual commentators. My job consisted of translating only points which had political, economic, propaganda, and military value into German."

Were those questions asked and those answers made in your presence during the course of the interrogation?

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A The gist of the reading I recall, but the exact wording of course I do not recall.

Q Did the defendant tell you and make the statement in your presence that--

"After it became clear to me that this whole set-up of Naziism had to be fought, I had to find a way to do it"--and that in Germany itself he was unable to do any effective work, and that therefore he had to find a way to leave that country?

A Just in the words you have put it, I do not recall any such statement.

Q Well, in sum and substance did he make that statement in your presence?

A In sum and substance he made that statement; yes.

Q I am now reading from page 140, and I will ask you to state if this question and answer was made during the course of interrogations when you were present (reading):

"Q I think it might be well to go into more detail on how they acquainted you with the Seibold case.

"A In February when I was officially assigned or became officially connected with the German High Command, I was asked to prepare all the groundwork for this undertaking. I in turn asked them to supply me with all possible records of success or failure of similar undertakings so I could study the ways and methods of this kind of undertaking. I argued that I was not a professional saboteur so would need to know what methods to use. I was furnished two files, all of them covering the Seibold matter. I concluded after having established what it was all about that a man came over here to this

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country after having been hired by the German High Command to establish a radio communications station which he in turn turned over to the F.B.I. and was hired by them to work there, making the Germans believe that he was still loyal to the undertaking, and then finally he turned yellow. All these reports were in there. How they exactly read I do not recollect. I gathered from the reports that this man had done what I was planning to do. I found myself in a very ticklish situation. I asked myself why they entrusted those reports to me. On top of every report there was marked with a red stamp the word 'Geheim,' meaning in English 'Secret.'

I thought it advisable not to mention the case of Seibold, but after a couple of days or a day or two, Lieutenant Kappe came to Der Kaukakus where the files were all located. They were locked away in a desk, the key of which I always hung behind a mirror. He asked me if I had read the case of Seibold and I told him I had. He asked me what I thought of it. I said the guy must have been a dirty so-and-so. I asked if he was still alive, and he said he supposed so, but they had men trailing and gunning for him until they got him. He said that no matter where he went they would get him. I naturally took the first opportunity to change the subject. The records were of sabotage done by foreign agents or by alien workers in Germany and in the upper countries for the months of October, November and December, and the other file consisted of records of sabotage acts in January, February and March. The second file came into

3w

my hands some time between the 1st and 3rd of March. Each act of sabotage was explained thoroughly as to how it was done, what they attacked, whether the men were caught, and what happened to the subjects. The sabotage acts were filed by separate countries such as Occupied France, Occupied Belgium, Holland, Denmark, Poland, Lithuania, Czechoslovakia, Yugoslavia, and all the way through. I took out of those records certain examples which might be used by us or on which we might build up our education and so on in our general trend of affairs when we were together."

Was that question asked and that answer made in the course of the interrogation in your presence?

A I recall the gist of that, but word for word I do not recall it.

Q Do you recall specifically that he said that this other man about whom he was talking had done, it appeared, just what he, Dasch, was planning on doing? You do recall that definitely, do you not?

A I recall a similar statement. Word for word, as I say, I do not recall it.

Q Do you remember discussing with Dasch matters relating to Kerling and Neubauer? I might give you a little further information to aid in your recollection. It seems that Kerling and Neubauer had tried to leave the United States in 1939 in a sail boat, and they were held up for some time, and the F.B.I. for that reason seemed to have records of them and photographs of them, and they were presented to Dasch.

Colonel Royall. If the Commission please, the other

4w

defendants object to the statement of counsel. That was not a question; that was a statement involving other defendants.

Colonel Ristine. If the Commission please, it was explanatory of the question put to refresh the recollection of the witness as to the incident. I certainly have no objection to the other defendants objecting to it.

Colonel Royall. We move that the statement of counsel, --and I am not impugning any wrong motives to counsel with reference to it--be stricken from the record, so far as it relates to these other defendants.

A Member. You have a general objection to any of these statements, have you not?

Colonel Royall. We have a general objection, may it please the Commission, to anything that Dasch said or that anyone else said to this witness. We have not a general objection which covers statements by counsel; and that is the reason I make a special objection to that.

The President. If there is no objection on the part of any member of the Commission, the objection of counsel for the other defendants is sustained.

Questions by Colonel Ristine:

Q Do you remember being present when any photographs from the F.B.I. records were present to Dasch to see if he could identify them?

A Yes, sir; I was present.

Q Could you give me the names of the persons the photographs were made of?

The Attorney General. To save time I am going to introduce all the photographs and have them identified. I did not have them on Saturday.

5w

Colonel Ristine. The purpose of this examination, so far as the defendant Dasch is concerned, is to show that he formulated a plan.

The Attorney General. I have no objection, you understand, to the question.

Colonel Ristine. In explanation of the question, it is for the purpose of showing that before he left Germany he formulated definite plans to leave that country to get to any other country where he could fight the ruling power of Germany, and that this was the only method that was available by which he could leave Germany, and therefore he adopted it, and immediately after arriving here he carried out the plan. This is just one of the things he did in carrying out that plan, and that is the reason for going into that character of testimony.

The President. There is no objection to your proceeding.

Questions by Colonel Ristine:

Q Would you give the names of the persons involved in the photographs that were presented to see if he could identify them, and state whether or not any were presented to him in which any of the present defendants were involved and, if so, whom?

A The photograph of Edward Kerling was presented, and also the photograph of Neubauer.

Q What was said respecting those photographs?

A The defendant Dasch just stated, "That is Kerling" and "That is Neubauer."

Q In the course of the questions and answers was he asked, and did he give all of the details that he could, with respect to the other seven defendants now before the Commis-

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sion?

A As for all the details that he could give, I of course do not know. He did give some details.

Q Were the details he gave sufficiently explicit to be of aid to the F.B.I.?

A Were the details sufficiently explicit to be of aid?

Q Yes; to the F.B.I.

A Well, they consisted of a description; and that is of assistance.

Colonel Ristine. We would like at this time to request the Attorney General to produce a statement written by the defendant Dasch which he requested be attached to and made a part of the document which is Defendant's Exhibit A.

The Attorney General. I would like to know the purpose of the request.

Colonel Ristine. I request that the document be turned over to me for the purpose of cross-examining this witness.

The Attorney General. Does the witness know anything about it?

Colonel Ristine. And for the purpose of identification, and for the further reason that the document, together with a copy of the charges which have been served on the defendant Dasch, were taken away from him and apparently not attached to the original document, Defendant's Exhibit A and, I understand, is still in the possession of the prosecution.

The Attorney General. With the Commission's permission I will answer counsel for the defendant Dasch after I have asked a question of this witness, and then the Commission can rule on it.

7w

Questions by the Attorney General:

Q Mr. Wills, do you know anything about a statement made by the defendant Dasch while he was under apprehension, while he was confined in jail? Did he make any statement to you in writing as to what he would testify to, on the third of July?

A On the third of July, a written statement?

Q Any kind of a letter or statement.

A He has never given me any written material, if that is what you have reference to, sir.

The Attorney General. Then I shall not produce it. The witness knows nothing about it, and I want to get through with this witness and take up the other matters in due course, unless the Commission thinks I should produce it. Then of course I will.

Colonel Ristine. I will state to the Commission that I have served a written notice upon the other side requesting them to produce the document for my inspection and examination and for me to use; and we feel that from the very nature of things it is such a document that we are entitled to have, or at least to have a copy of. I now request that a copy or the document itself be turned over to me in compliance with that written request.

The Attorney General. This is not the defendants' case. It is a self-serving statement made by the defendant Dasch. He asked under cross-examination of this witness to have it produced. I do not think that is appropriate. I want to get through with this witness and then take up the next witness. This self-serving statement made in jail by the defendant Dasch I do not think is relevant in any way, and unless the Commis-

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sion says that I should give it to counsel for the defendant at this time I do not propose to do so. But I shall be entirely guided by whatever the Commission directs, of course.

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The President. As I understand it, the witness has said he knows nothing about it himself.

Colonel Ristine. I hardly think the witness intended to go that far. I think he said that he had not given to him any written document. I believe the witness has some knowledge respecting the original document, and I might for clarification ask a few questions along those lines, if I may be permitted, before you rule on it.

Questions by Colonel Ristine:

Q Did Mr. Dasch request permission of you or in your presence to be furnished with paper and pencil?

The Attorney General. Will you specify the date?

Questions by Colonel Ristine:

Q So that he could write out a full account of what transpired when you and Johnstone endeavored to induce him to enter a plea of guilty, and did you,or Johnstone in your presence, state that it would be all right for him to make or write out such a statement, and furnish him with the material with which to write it out, and did he also request that it be made a part of the document identified as Defendant's A?

The Attorney General. Will you specify the date when the request was made?

Colonel Ristine. I think the date was on July 3rd,that it was obviously on or about July 3rd and was limited, as I understand it, in the subject matter thereof to the incidents surrounding the efforts to get him to plead guilty and secure a subsequent pardon.

The Attorney General. At counsel's request, the Commission has ruled everything that has taken place since

2b

this oral confession cannot be gone into, so I think it is obviously improper for counsel to now try to get certain admissions made after the 27th. For counsel to be now permitted to have certain alleged confessions put in, after that date, he having requested that they be ruled out, it seems to me improper. I believe the same ruling is applicable. Therefore, I object to it.

Colonel Ristine. If the Commission please, I intended by no stretch of the imagination to let the recording of what transpired in connection with their efforts to get him to plead guilty in connection with the promise of a Presidential pardon to be construed by anybody as a confession by Mr. Dasch. It is, however, a recorded detail of what happened almost simultaneously with the happening of the event and it was written out by Dasch, so I am informed, with the understanding that it would be attached to and made a part of the document marked Defendant A, not on the theory that it was a confession, but that it is explanatory of what had happened while he was in this protective custody, as he thought he was, even at that time. And when he was removed from New York to Washington, that document, together with a copy of the charges which had been served upon him, was taken out of his possession, and when he got to Washington the copy of the charges was returned to him but the other document was not returned to him and was not attached to this exhibit.

We feel that we are entitled to see it, inspect it, examine it, and only if and provided we offer it in evidence would any objection be proper on the other side as to what we intend to do with it.

3b

The Attorney General. I have nothing further to add.

The President. I might ask the Attorney General for the information of the Commission, before I make any ruling, this question. For the moment it seems to me a reasonable request on the part of defense counsel to make, to see this document.

The Attorney General. I will show it to him.

The President. It is not in evidence, but if it is true that it is part of the examination of the defendant Dasch at which the witness was present, it seems to me it is the fair thing for you to show it to counsel.

The Attorney General. I will be very glad to do so, you having expressed that opinion. Perhaps then the question will be withdrawn.

The President. Yes.

The Attorney General. I will show it to counsel.

The President. If you please.

2 Colonel Ristine. I would like an opportunity to read it before concluding the cross-examination of this witness. However, if I might be permitted to recall the witness, if I should desire, for further cross-examination after I read it, it will not be necessary to take the time to read it now.

The Attorney General. Why don't you ask him if he knows anything about it, first? Won't you ask him if he knows anything about it?

Colonel Ristine. Yes.

The President. That is a question that might be asked.

Questions by Colonel Ristine:

Q Did Mr. Dasch request stationery of you or anyone in your presence in order to write out a statement?

4b

A No, sir.

The President. Possibly you can show the witness this paper, to help you in your questioning.

Questions by Colonel Ristine:

Q This is, I take it, a photostatic copy (handing document to the witness). Now, were you present when Mr. Dasch was moved from New York to Washington on or about June 27th or whenever he was moved back to Washington, D. C.? July the 3rd probably is more accurate.

A From New York to Washington?

Q Yes.

A Yes, sir, I was present.

Q Were you present when he was taken out of the jail or cell in which he was then incarcerated?

A Enroute to Washington?

Q Yes.

A Yes, sir, I was present.

Q Were the papers and effects which he then had in his possession taken from him at that time?

A At no time during that removal were any papers taken from his possession in my presence

Q Do you know whether as a matter of fact the documents in his possession were taken from his possession at that time?

The Attorney General. He just said they were not, in his presence.

Colonel Ristine. I realize he said they were not, in his presence.

The Attorney General. I object.

The President. The Commission sustains the objection.

5b

Colonel Ristine. I withdraw it. I think it strictly might be better to ask somebody else.

The President. Yes.

Questions by Colonel Ristine:

Q Who else was present when Dasch was moved from the cell in New York to Washington, D. C., on or about July 3rd?

A Special Agent Frank G. Johnstone and--there was one other agent with us. I am just trying to recall his name.

Q We will find out.

A Member. You might suggest a name.

The President. Does the defense counsel know the name of any other agent himself?

Colonel Ristine. No, if the Commission please. I would cheerfully suggest it if I knew the name. I think it would be perfectly satisfactory for them to supply the name later.

The Attorney General. We will try to get it for you.

Colonel Ristine. Yes. We don't need to delay this matter for that.

Questions by Colonel Ristine:

Q Then you have no knowledge whatever respecting a request from Dasch to be permitted to write this document, or his having written it, or its having gotten out of his possession into the possession of the F.B.I.?

A No, sir, I did not say that.

Q Well, then, will you in your own way tell us what you know about this document?

The Attorney General. Now, wait a minute. He said it was not taken at the time he was there. He was not there when it was taken. He knows nothing about it. It is the same attempt

6b

by hearsay to introduce this. It is again trying to get in by hearsay something the witness knows nothing about.

Colonel Ristine. I beg the Commission's pardon. I never intended to--

The President (interposing). I don't think this is so vital that it cannot be answered. It will enlighten the Commission and dispatch the case.

The Attorney General. Very well.

The President. I think that you can pose that question and expect an answer.

The Attorney General. Answer the question.

A I believe that it was Monday, June the 29th, that I went in to see the defendant Dasch and at that time he had pencil and paper and he was writing. It was about two pages of written material that he had at that time.

Questions by Colonel Ristine:

Q And do you know whether that was a part and parcel of the document I now hold in my hand?

A Let me see it. (The document was handed to the witness.) Yes, sir.

Colonel Ristine: I think that is all for the present.

The Attorney General. May I be permitted to ask two or three questions? Had you finished?

Colonel Ristine. Just one other question.

Questions by Colonel Ristine:

Q Did Mr. Dasch ask you personally how to word it, phrase it?

A No, sir, he did not ask me how to phrase it.

Q Did you tell him that you would investigate the ten-

7b

page statement as a supplementary statement given in Washington?

A I don't know what you have in mind there, sir, that I would investigate it.

Q With a view to having it made as a supplement to Defendant's Exhibit A.

A Did I tell Dasch that I would investigate that with a view of making that a supplement?

Q That is right.

A No, sir, I never made any such statement to Dasch.

Colonel Ristine. That is all.

The Attorney General. I will ask the reporter to mark these photographs.

(A number of photographs were thereupon marked for identification P-99 to P-115, both inclusive.)

REDIRECT EXAMINATION

Questions by the Attorney General:

Q Mr. Wills, when you were testifying on Saturday you were asked, "Did anybody promise him anything?" in a question referring to Dasch, and your answer was: "Yes, sir. Mr.Donegan, on the afternoon of Saturday, June the 27th, told defendant Dasch that he would be indicted and appear before a Federal court, that at that time he should enter his plea, or if he entered his plea of guilty and he was sentenced to prison along with the others, that through the F.B.I. a Presidential pardon would be obtained for him." Do you remember the words Mr. Donegan used to Mr. Dasch when he made that statement, as nearly as you can recollect?

3

A As nearly as I can recollect that, when we came down-

stairs there were present Mr. Donegan, Mr. Traynor, and Mr. Johnstone, Special Agent Johnstone, and myself, and there was some discussion about the family of Dasch being in Germany and were it known that he had given information his family might be in danger and it was said if he appeared in open court and made remarks and testified then, of course, it would endanger his family in Germany, or he could come into court or be indicted with the others and enter his plea of guilty and after a sentence and being committed to prison and after-- not interest, but the news, that the public had more or less forgotten about the matter, then the F.B.I. would recommend that he receive a Presidential pardon.

Q Now, was Edward Brekke the name of the other agent who came down with Johnstone and you?

A Yes, sir.

Q From New York with Dasche?

A Yes, Special Agent Edward Brekke.

Q I show you marked for identification Exhibits P-99 to P-115, inclusive. Will you look at those photographs? You need not read each one. Just look at them generally.

A Yes, sir.

Q Did you show those photographs to the defendant Dasch?

A Yes, sir, I did.

Q Did you show him the objects represented by the photographs?

A No, sir, I did not.

Q Did any agent in your presence show him those objects?

9b

A No, sir, not in my presence.

Q Did Dasch endorse the photographs that you hold in your hand?

A Yes, sir, he did.

Q And does his writing appear on each photograph?

A Yes, sir, it does.

Q And his signature?

A Yes, sir.

Q And the date?

A And the date, yes, sir.

The Attorney General. Any objection to the photographs?

Colonel Royall. What was the date?

The Attorney General. The date is July 3rd.

Colonel Ristine. If the Commission please--

The Attorney General. Any objection?

Questions by the Attorney General:

Q Would you take each photograph--I show you, first, P-99. Did you show Dasch this photograph?

A Yes, sir, this photograph was shown to Dasch.

Q On what day?

A July the 3rd, 1942.

Q And what did he endorse on the back?

Colonel Ristine. Just a minute, if the Commission please. We object to any statement that he may have endorsed on the back as being contrary to the previous ruling of this Commission. This is July the 3rd, long after June the 27th. As I understood it, the Commission ruled that nothing that was said in the nature of a confession or statement on the part of the defendant Dasch would be used, subsequent to June 27th, on

10b

account of the promise of the Presidential pardon.

The President. That is not my remembrance of our ruling. Our ruling was in a positive sense, as I remember it. First we ruled or we made a statement and then we ruled that he could give evidence up to that date. We did not say he could not give evidence after that date. That is a new question which you now bring up at this point. I believe, however, you have already asked certain questions of this same witness after that date yourself.

Colonel Ristine. Not, if the Commission please, respecting any statements made by Dasch or any answers he made in response to an interrogation by an agent. It was merely with respect to a paper which he himself wrote and the details of which were not even inquired into.

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Obviously, this could only be construed as a statement against interest made by Dasch subsequent to June 27, when they made these promises to him, which I thought we went into very fully on Saturday.

The Attorney General. In order to clarify the matter a little more, I shall with your permission ask one more question of the witness before you rule.

Questions by the Attorney General:

Q Did you hear Agent Donegan's suggestion to Dasch as to what might occur if he decided to plead?

A Yes, sir.

Q What was Dasch's answer to that? Did he accept it?

A Dasch at that time stated that that was the only thing to do.

Q Did he subsequently make any other decision on it?

A Yes, sir, he did.

Q What did he do then?

A Well, the next day, Sunday, June 28, I went to see Dasch, and at that time he told me that he had changed his mind; that he didn't want to enter a plea of guilty.

Question by Colonel Ristine:

Q Would you give the reasons he gave you for changing his mind?

A At that time he said that he had--before he left Germany he had talked with his mother, and that she is rather old, and that she would want him fighting, and that he wasn't guilty, and for that reason he would not enter a plea of guilty.

The Attorney General. I should like the Commission to rule. I have no particular argument. I do not see what these photographs have to do with any confession, particularly where

o2 the plea of guilty has not been entered.

Colonel Ristine. We have not objected, if the Commission please, to the photographs.

The Attorney General. I say, with Dasch's identification.

Colonel Ristine. If they eliminate the written part on the back thereof, we have no objection to the photographs being introduced in evidence.

The President. Is that satisfactory?

The Attorney General. No, it is not satisfactory--definitely not. I think that the identifications on the photographs are very important, of course. I am not clear as to the basis of the objection.

The President. We are not clear either on it.

The Attorney General. I am not at all clear on it. May I ask counsel to state the reason for the objection? Personally I do not follow it.

Colonel Ristine. If the Commission please, I have not had time to read the written portions on the backs of these photographs.

The President. I think that we might settle the question by giving you a five-minute recess to enable you to look at them; you might then possibly be better advised.

Colonel Ristine. That might be better.

The Attorney General. In each case the identification is a statement of what the photograph represents.

Colonel Ristine. I should like an opportunity to read them.

The President. We will declare a recess for five minutes for the purpose of giving defense counsel time to look at these

03 exhibits.

(At this time a short recess was taken. The following then occurred:)

The President. The Commission is open.

Colonel Munson. The personnel of the Commission and of the prosecution and the defense, except Major Thurman of the prosecution and Captain Hummell of the defense, who are absent on official business; all eight of the accused; and the reporter are in their seats as prior to the recess.

The witness is reminded that he is still under oath.

The Witness. Yes, sir.

Colonel Ristine. If the Commission please, I withdraw the objection to these photographs and the parts on the backs thereof in the handwriting of Mr. Dasch.

Colonel Royall. May it please the Commission, I think our stipulation and general objection covers this, but I do want to say to the Commission that this is a particularly good illustration, it seems to us, of the danger of admitting the confession of one defendant as against the others.

It appears from the evidence that these statements were made by the defendant Dasch after circumstances occurred which might well have coerced him and probably did. Yet without any opportunity to cross-examine Dasch, which the introduction of the confession does not give us, these statements are being received as against the other defendants. I do not seek to re-argue the question at this time; I merely want to restate my specific objection, which is, if possible, stronger than ever in the case of this evidence.

Colonel Ristine. There is no question raised about t

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defendant Dasch being shown the original objects in connection with the photographs, and he informs me that the statements on the backs are correct, accurate statements.

Colonel Royall. The defendants specifically object to that statement of counsel as to what the defendant Dasch has told counsel, and we move that it be stricken.

The Attorney General. I agree that that should be stricken.

A Member. The only matter before us is that there is no objection to the introduction of these pictures; that is all.

The President. The explanatory statement of counsel will be stricken.

The Attorney General. I introduce exhibits P-107 to P-115, inclusive.

(The pictures Exhibits P-107 to P-115, inclusive, were offered in evidence.)

The Attorney General. May it please the Commission, I should now like to call upon Agent Donegan.

Colonel Ristine. I should like to ask this witness one further question. It seems that I incorrectly read the note that my client handed me, and I asked the wrong question.

RECROSS EXAMINATION

Questions by Colonel Ristine:

Q I should now like to ask you, Mr. Wills, if Mr. Dasch did not ask you how he should designate this new statement which he was writing, the first two pages of which you saw, and that you told him to designate it as a supplementary statement to the statement given at Washington from June 19 to 26.

A That latter portion I do not recall. I believe that it was a supplementary statement.

o5 Q That is, that he asked you how to designate it, and you said as a supplementary statement?

A Yes, sir.

Colonel Ristine. That is all.

Colonel Royall. The defendants other than the defendant Dasch do not desire to cross-examine this witness. If I may be permitted to do so, I should like to explain to the Court why we do not desire to do so.

In the first place, we are still relying on the motion, which we shall again present to the Commission, to exclude these confessions as to the other defendants. In the second place, it is perfectly apparent that cross-examination of this witness would in no way serve as a substitute for the cross-examination of Dasch himself, the man who is alleged to have made the statements.

Next I desire to be certain that our objection and motion to strike all the statements of this witness as to what Dasch told him applies also to what this witness has stated the other agents told him, or the statements of this witness as to what Dasch said that somebody else said to Dasch, all of which is in this testimony. I understand that our objection does cover that, as far as these other defendants are concerned.

The President. Have you any comment on that, sir?

The Attorney General. No, sir.

All right, Mr. Wills.

May it please the Commission, I should now like to call Agent Donegan, Agent Wills having said that Donegan had made the statement with respect to pleading the defendant Dasch; but before calling him, I want to point out to the Commission that

06 Agent Donegan was present before the Commission while Wills was testifying. I see no objection to calling Agent Donegan, but I want to have the Commission and counsel, in case they wish to object to it, to have that information. Is there any objection from the defendants to my calling Agent Donegan?

(There was no objection.)

Lieutenant Page. This witness has been sworn as to secrecy.

Colonel Munson. You do solemnly swear that the testimony you shall give in this hearing shall be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. Donegan. I do.

THOMAS J. DONEGAN

was called as a witness for the prosecution and testified as follows:

Colonel Munson. Please state your name, residence or office address, and occupation.

The Witness. My name is Thomas J. Donegan--D-o-n-e-g-a-n. I am Assistant Agent in Charge, assigned to the New York office of the Federal Bureau of Investigation.

The President. May I ask the Attorney General if there are any other persons now present in the room whom he might call as witnesses who would be influenced by their colleagues on the witness stand?

The Attorney General. There are not, Mr. President, and I had not expected to call this witness. He was in charge of certain of the material and exhibits, and that was why I made the statement to the Court. There are no others now. The other F.B.I. agents are simply agents in control of the exhibits and the testimony.

o7 Colonel Royall. May it please the Commission, I understand from the Attorney General's explanation that this is an unexpected situation that has presented itself. I am further to understand, am I not, that the Commission is not relaxing its policy of keeping the witnesses separate?

The President. That is the case.

DIRECT EXAMINATION

Questions by the Attorney General:

Q Mr. Donegan, were you present with the defendant Dasch and Agent Wills, as Agent Wills testified, and what was said by you and others as to what would be recommended in case the defendant Dasch did certain things?

A On the afternoon of June 27 the defendant Dasch was brought to my office in New York City by Agent Wills and Agent Johnstone. Present at that time was Special Agent Traynor.

I had previously talked to the defendant Dasch on June 25, the evening he was brought from Washington to New York City.

On June 27 I told Dasch that the investigation was coming to a conclusion, and the question presented itself as to what course of action he wanted to pursue.

He had previously, on the evening of June 25, expressed concern for his parents in Germany and said that he didn't want it to become known what part he had played in the investigation. That was the reason for my talking to him on the afternoon of June 27.

I told Dasch that we were considering his position, and the way I saw it at that time there were two possible courses of action open. One was that he go into Court, and the District Attorney--the United States Attorney--and, of course, the

o8 Attorney General would be familiar with the part he played in this investigation, so that he could be given appropriate consideration at that time. I told him that I would only be familiar with the procedure that would be followed in civil court; that it had not definitely been decided at that time what course of procedure would be followed with him. I was offering those suggestions.

I told him, of course, that our method of procedure was such that it would immediately become public knowledge that he had played the part, to some degree, of an informer in this matter.

Q What would become public knowledge?

A His part that he had played in this case in giving us information as to part of the activities of some of the subjects.

Q I do not quite understand. You mean if he went into court?

A Yes.

Q Make that plain.

A In other words, if he went into court and was shown consideration. I told him that the other course of procedure, if he desired to follow it, would be to go into court and to plead guilty, inasmuch as he had stated he did land from a submarine, and let the course of events follow the natural course which they would in a district court--Federal district court. At that time the Director would call to the attention of the Attorney General for the purpose of the Attorney General's considering the recommendation to the President of a Presidential pardon.

09 I talked to Dasch for a period of about an hour and a half. I told him it was entirely up to himself what course of action he wanted to take; we were not concerned with that; but we did feel that we wanted to point out the various possibilities as we saw them at that time, so that he could protect his folks in Germany.

He was very much concerned over the welfare of his father and mother, and, I believe, a sister in Switzerland. He was quite disturbed over the possibilities that harm might come to them.

At the conclusion of that interview, he definitely stated that he wanted to follow the course of procedure wherein it would not become public knowledge that he contacted the Federal Bureau of Investigation, and he stated that he desired to follow the course of procedure wherein he would go through the court and plead guilty with the other defendants.

That was, in substance, my conversation.

Q Did you talk to him with respect to this after that date? That was, I think you said, on the 27th.

A On the morning of the 28th Dasch asked [redacted] to see me, and I stopped in a moment to see him, and he stated that he desired to change his course of procedure.

Q In what respect?

A That he didn't wish to plead guilty; that he wished to go into court and make a full explanation.

Q Did you say anything further to him at that time?

A No. I had a long distance call at that time, and I excused myself.

The Attorney General. Cross-examine.

o10 Colonel Royall. May it please the Commission, I assume that my general objection, without repetition to each one of these statements, applies to the statement Dasch made? That is, we object as to the other defendants and move to strike it out.

The Attorney General. For my part, I agreed that that objection may go right through the record without your having to repeat it.

Colonel Royall. That simplifies it greatly.

CROSS-EXAMINATION

Questions by Colonel Ristine:

Q Mr. Donegan, on Sunday morning did not Mr. Dasch tell you that he had changed his mind and would not enter a plea of guilty, and then did you not tell him, "It is too late; it is already in the papers"?

A No, I didn't. I told him I was disappointed in the idea; that we had gone over the matter so completely with him the evening before; but I didn't take time at that time to discuss it with him.

Q Well, was it already in the papers?

A On Sunday morning?

Q Yes, sir.

A Yes, it was. It was in the papers.

Q When the proposal that he enter a plea was first made, he said that he couldn't do that because it would not be the truth, did he not?

A I don't recall that. I recall the discussion you are referring to--the afternoon of June 27, I take it?

Q Well, whatever the date was when the matter was

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first broached to him?

A That is right.

Q That he would protect his parents better by entering a plea of guilty?

A That is right. The discussion was for the purpose of considering the position his parents would be in in Germany when it became known the part he played in this case.

Q Would you answer the specific question I asked you?

A I am endeavoring to explain exactly how the discussion occurred.

Q Will you answer the specific question that I asked you?

The President. We will ask the reporter to read the question. It is possible that the witness may not have remembered it.

The Reporter (reading)

"Question. When the proposal that he enter a plea was first made, he said that he couldn't do that because it would not be the truth, did he not?

"Answer. I don't recall that I recall the discussion you are referring to--the afternoon of June 27, I take it?

"Question. Well, whatever the date was when the matter was first broached to him?

"Answer. That is right.

"Question. That he would protect his parents better by entering a plea of guilty?

"Answer. That is right. The discussion was for the purpose of considering the position his

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parents would be in in Germany when it became known the part he played in this case."

The President. I think the defense counsel might possibly pose the explicit question he now wishes answered.

Questions by Colonel Ristine:

Q When it was first proposed to Mr. Dasch that he enter a plea of guilty, he did state that he could not do that because that would not be the truth or that he was not guilty or, in sum and substance, to that effect?

A I don't recall Mr. Dasch making statements along the lines that you have expressed yourself just then. I recall Mr. Dasch saying that he was concerned about what procedure the courts would follow, and he did state that he felt that he was not guilty.

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Q After urgings that it would protect his mother and father and possibly other relatives from harm if he entered a plea of Guilty, he agreed to do it; is that correct?

A I will have, with due respect, to object to the phrase "After urgings." There was no urging whatsoever. It was a discussion, with the various possibilities being pointed out to him,and the purpose of the discussion was entirely for the purpose of his deciding what course he wanted to take. He was not urged to follow either course.

Q The F.B.I. agents who talked to him did not suggest to him that it would be a better method to protect his father and mother for him to plead Guilty?

A I talked to him. I told him if he wanted to protect his father and mother, that appeared to me at that time to be the logical course to follow, if the proceedings went into civil court; and I also told him that I did not know what course the proceedings would follow.

Q What did you mean when you said he should plead Guilty because he had landed from a submarine in this country?

A When I said that I meant from what I knew of what he had told the other agents; but I did not talk to him about the happenings myself, personally, that he had landed at Amagansett with three other subjects that landed from a German submarine at that time. That was my understanding of the facts.

Q You did not hold the position, then, that if he made up his mind before leaving Germany that he would not go through with the purpose for which the group came to the United States, and carried that purpose out after landing

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here, that he would be guilty of it, did you?

A I did not hold any purpose. I was just endeavoring to explain to him the possible courses of procedure which he could follow to achieve his end of keeping it secret, so it would not become publicly known and become known in Germany, the part he played in this matter. That was the only purpose of my discussion with him.

Q I believe you heard Mr. Wills' testimony here in the court room in which he related that a promise of Presidential pardon would be made. I am looking at page 545. You heard that testimony, did you not?

A I did. I was in the court room.

Q Are you taking the stand for the purpose of contradicting and impeaching that testimony?

A No, I am not; not by any means. It is for the purpose of explaining.

Q Was a period of six months mentioned to Mr. Dasch as to when he would get this pardon?

A Mr. Dasch asked me how much time I thought he would have to pass in prison. I said I did not know; maybe six months, maybe a shorter period, maybe a longer period. I told him that the recommendation would go to the Attorney General, and that it was entirely a matter between the Attorney General and the President of the United States.

Q How many days did Mr. Wills and, I believe, Mr. Johnstone, talk to Mr. Dasch following the decision which he made not to enter a plea, in an endeavor to get him to reconsider and go through with it?

A I am sorry; but in answering that question, if you will pardon me, I am trying to make as clear-cut an answer

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as possible, and I would like it divided, if you will do it. I think there are two questions in there. In other words, how many days did Agent Wills and Agent Johnstone talk to Dasch? I believe they saw him each day until he was transported to Washington, D. C.

Q I did not intend to ask that question. I intended to ask how many days they talked to him in an effort to induce him to change the decision which he had made not to plead guilty.

A I cannot answer that question.

Q Did they not spend two days and nights in an endeavor to get him to reconsider and permit a plea to be entered?

A I was not present.

Q You then, as I understand it, left immediately after he advised you that he would not?

A That is right.

Q Did he tell you that he would not plead guilty because it would not be the truth, or because he was not guilty and he just could not enter a plea on that account?

A As I recall it, he said that he could not plead guilty because he felt that he was not guilty. Now, that those were the exact words I could not say; but that is the substance of it; and that was a very brief conversation I had with him.

Q Were there two alternatives that were proposed to him, or more than two proposed, to him?

A My recollection is, two possibilities.

Q And those were what?

A One, to go into court and plead guilty; the other

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to let his position become known at the time he went into court so that appropriate consideration could be given.

Q As I understand it, he, in order to save his mother and father from harm, agreed to enter a plea of guilty. Is that correct?

A He stated that he wanted to follow that course of procedure on the afternoon of June 27.

Q That was the reason he agreed to follow that procedure, was it not?

A I do not know what his reason was. He said he wanted to follow that course of procedure.

Q Had not that course been recommended to him as the best course, to protect his father and mother?

A I told him that it appeared to me that if the case went into the District Court, that would appear to be the way to protect his father and mother; that the information would not become known to Germany, because if he was shown consideration in the District Court it would be made a matter of public record and naturally the information would be available in Germany.

Q After he promised to plead guilty to protect his mother and father the news was released to the press, giving the full story, so that the Germans could know as much about it as if he had gone in and taken the stand; is that correct?

A No; I would not say that was true.

Q Was not the information contained in the press release that he had confessed and would plead guilty?

A I do not recall any such.

The Attorney General. Certainly not.

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Colonel Ristine. I never read it; I do not know.

The Attorney General. Then why do you make such suggestions?

Colonel Ristine. Because I am acting on suggestions of my client; and I believe the witness stated that itwas in the newspapers that Sunday morning. Wasn't it?

The Witness. On Sunday morning the information was in the newspapers of the apprehension of eight subjects.

Colonel Ristine. I think that is all.

Colonel Royall. The other seven defendants do not desire to cross examine, in line with the policy they have announced.

The President. There seem to be no questions by the court.

(The witness left the stand.)

The Attorney General. If there is no objection from the defense, may it please the Commission, may I have permission to keep the witness Donegan in court? He is sworn to secrecy. He is not expected to be called again, and he is in charge of a great deal of vital evidence, and unless the Commission feels that he ought to leave the court room, it would be much easier for us in presenting the case for him to stay here. But I do not want to do anything that is inappropriate.

Colonel Royall. There is no objection on our part.

Colonel Ristine. I have no objection.

The President. He will be permitted to remain in the court room.

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The President. May the Commission consult the legal authorities together in open court. I would like to ask you something to see what your understanding of the point at issue is in the sense of your objection and the stipulation of the Attorney General.

I was hoping that there might be some statement on the side of the prosecution that would possibly clear it up, so that these witnesses would not have to be recalled, that is, so the defense counsel might be free while they are on the stand to cross-examine them. I am not conscious of the Attorney General having replied to these various objections made by the counsel as to protecting the interests of his other defendants in case the evidence of these agents of your Department should continue on the line of the present testimony and on your line of questioning.

I am just seeking a little clarification for either satisfying the defense in some way or at least putting before the Commission an opportunity to come to a definite ruling which would clear up the whole matter, if it were practical to do so, having in mind the concern of the Government and the natural concern on the part of defense counsel.

Colonel Royall. Your remarks are primarily to the prosecution counsel?

The President. Yes. Of course, we are not familiar with the line of development of the case.

The Attorney General. I am not absolutely clear, Mr. President, what you are asking me. I have agreed that the objection goes to every confession of any defendant as affecting the other defendants. I understand that perfectly. I am

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not quite clear what you are asking me with respect to that. I am clear that you had ruled with respect to a specific confession, that that affects the others. What is it you are asking me to do?

A Member. It was ruled about the Burger confession. Now the proposition is that the defense counsel for all of the others is objecting each time to the fact that that would not apply to the other defendants in this case. Is it your contention that it does apply to the other defendants in this case?

The Attorney General. Yes, it is, clearly, that it does.

A Member. That is the question.

The Attorney General. And I assumed that counsel took it that you had ruled and was putting his objection in the record and at some future date if he wanted to again argue it he could do so.

Colonel Royall. Yes, that is right. The view we are taking of this matter, without seeking to reargue it at this time, is that the question is absolutely fundamental and perhaps determinative of this case as to certain of the defendants.

Now, with all due deference to the Attorney General, we are so confident that we are absolutely correct on that that we do not want to take any action in this matter which would make it impossible for the Commission to go back and reverse its ruling, if we were able to convince the Commission that that should be done.

In case we should cross-examine any of these witnesses we would run into two difficulties. In the first place, we would make it almost impossible to return the case to the status it

would have been if the Commission decided to reverse its ruling, because our cross-examination would be interrupted. In the second place,regardless of any stipulation, it might be a waiver of our rights if we inquired into a matter which we said was not a subject of inquiry as to the other defendants.

The Attorney General. I want to make it perfectly clear now and here that I agree that it would not be a waiver of their rights. I do not want to put them in any position where they are caught in any way. I want them to preserve all of their rights, whether they cross-examine or not, to reserve all of their objections on the whole record. It comes down not to striking the confession itself, because likely that would be against the confessant,but without going back into the testimony, should you by any possibility change your ruling in that respect, in that the evidence of the other defendants be stricken and remain on the record with respect to the confessant, although I do not think there is anything involved or difficult in this form of procedure, I just do not want to have anything in this record that would at any time put Colonel Royall in any position of waiving any rights he has. They will always be preserved on this record so far as I am concerned.

Colonel Royall. I appreciate that sentiment by the Attorney General and that certainly removes one of the objections I had to the cross-examination. I have to differ with him as to removing the other, however.

As an illustration, if I took the witness and picked out one defendant, X, we will say, and examined that witness in detail as to what Dasch or Burger or anyone else said as to X,

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the record would be in a shape where I do not think human minds are capable of separating it and segregating it, because I would be going into the matter from a different angle and with a different objective, and I do not think it could be segregated.

Now, we think this: In this case there are statements made by the defendants and we admit that the physical facts, as they relate to any defendant, are competent, but we think it is fundamental and we think the interests of the defendants make us willing to take any risk of lack of cross-examination that may arise, to be thoroughly consistent with the proposition we do think is correct and fundamental, that you cannot convict one of these men on the hearsay of another.

That is just our position.

The President. That clarifies the case. I would be glad to hear anything further, Colonel Ristine.

Colonel Ristine. If the Commission please, if I understand the proposition of the Attorney General, and the position he has heretofore taken, the objections which were urged for and on behalf of the other defendants, including Dasch, have been and are now being preserved so far as he is concerned, notwithstanding I have cross-examined witnesses.

The Attorney General. Certainly.

Colonel Ristine. And I do not feel that with that understanding I have waived any rights on cross-examination.

The Attorney General. That is right.

Lieutenant Murdock.

Lieutenant Page. Lieutenant John B. Murdock. This witness has not been sworn as to secrecy.

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Colonel Munson. Lieutenant, you first take an oath as to secrecy. I am instructed by the Commission to inform you that violation of that oath may result in contempt proceedings or in other proper proceedings either of a military or civil nature. With that understanding, are you willing to take the oath?

Lieutenant Murdock. Yes, sir.

Colonel Munson. Put up your right hand.

Do you solemnly swear that you will not divulge the proceedings taken in this trial to anyone outside of this courtroom until released from your obligation by proper authority or required so to do by such proper authority?

Lieutenant Murdock. I do.

Colonel Munson. You will also take the oath as a witness.

You swear that the evidence you shall now give in the case on hearing will be the truth, the whole truth, and nothing but the truth, so help you God?

Lieutenant Murdock. I do.

LIEUTENANT JOHN BENJAMIN MURDOCK

was called as a witness for the prosecution and testified as follows:

DIRECT EXAMINATION

Questions by Colonel Munson:

Q Will you please state your name, rank, organization, and station?

A John Benjamin Murdock, First Lieutenant, Signal Corps. I am with the 3rd Reporting Platoon of the 651st Signal Reporting Company, Air Corps Warning Frontier.

Q Stationed where?

A Stationed on Montauk Point, sir.

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Q Long Island, New York?

A Yes.

Questions by the Attorney General:

Q Are you in command of a platoon?

A I am, sir.

Q What area do you cover?

A We man a station which covers a certain sector of the sea off Long Island, sir.

Q Along the beach?

A No, sir. We do not cover any particular area on foot.

Q Does the area include the beach?

A Sir?

Q Does the area that you cover include the beach?

A No, sir. The word "cover" is confusing there. Our work is at a radio locator station. We do not have any work such as patroling beaches at all.

Q Where is your work?

A We are stationed on the top of Prospect Hill and we are an airplane radio locator.

Q How close to the Amagansett Beach Coast Guard Station?

A We are about 10 miles from it, sir.

Q Do you work in cooperation with theCoast Guard at Amagansett Beach?

A Yes, sir, we do. When they run into trouble we go over to help them out.

The Attorney General. That is all. I beg your pardon. The Commission may have some questions?

The President. Any questions by the Commission? There

7b

seem to be none. You are excused.

Colonel Royall. May I be permitted to ask him one question?

The President. Lieutenant, will you return to the witness stand, please.

CROSS-EXAMINATION

Questions by Colonel Royall:

Q You say you help the Coast Guard when they need assistance?

A Yes.

Q You help any other unit of the armed forces if they need assistance?

A Yes, sir.

2 Colonel Royall. That is the answer. That is all.

(The witness left the stand.)

The Attorney General. Agent Traynor.

Lieutenant Page. Agent Traynor. This witness has not been sworn as to secrecy.

Colonel Munson. Mr. Traynor, two oaths are administered to you. The first is the oath of secrecy. I am instructed by the Commission to inform you that violation of that oath may result in contempt proceedings or in other proper proceedings of a criminal nature. You understand by taking that oath you of course subject yourself to those penalties.

Mr. Traynor. Yes.

Colonel Munson. Hold up your right hand.

Do you solemnly swear that you will not divulge the proceedings taken in this trial to anyone outside the courtroom until released from your obligation by proper authority or are required so to do by such proper authority?

Mr. Traynor. I do.

Colonel Munson. I will now administer the oath to you as a witness.

Do you swear that the evidence you shall give in the case now on hearing shall be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. Traynor. I do.

DUANE L. TRAYNOR

was called as a witness for the prosecution and testified as follows:

DIRECT EXAMINATION

Question by Colonel Munson:

Q Will you please state your name, residence or office address, and occupation?

A My name is Duane Traynor. I am with the Federal Bureau of Investigation as a special agent, assigned to the Bureau headquarters in Washington, D. C.

Questions by the Attorney General:

Q Mr. Duane, do you know the defendant Dasch?

A I do.

Q I show you P-98 already marked and ask you what this is, whether you recognize it.

A I recognize that as a handkerchief taken from George Dasch.

Q On whatday?

A On June 19, 1942.

Q And what did Dasch say the handkerchief was?

A Member. Just a minute. The defendant Dasch wants to talk to his attorney there. Let him move over.

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Questions by the Attorney General:

Q What did Dasch say the handkerchief was?

A Dasch informed me that this handkerchief contained the names of certain persons written on it in secret ink.

Q That was what date?

A June 19, 1942.

Q Did he then give you the reagent of the handkerchief to produce the writing?

A He did not. He stated that he could not remember what it was that was necessary to produce the writing so one could read it.

Q Did he tell when and where the ink was put on the handkerchief?

A He advised me that this handkerchief was written on in Berlin, Germany, sometime in May, prior to the time that he left for the United States.

Q Did he tell you who wrote on it?

A He advised me that it was written on by himself in the presence of Lieutenant Kappe of the High Command and in the presence of Edward Kerling.

Q What did you do with the handkerchief?

A I kept it in my possession that day and until such time as I was able to ascertain what reagent might bring out the secret writing.

Q Whom did you give it to?

A I gave it to our bureau laboratory when we were able to--

Q What individual did you give it to?

A Mr. McGee of our bureau laboratory.

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Q On what date did you give it to him?

A I believe it was June 22nd.

Q At that time had Dasch given you the formula or reagent for bringing out the writing?

A At that time--it was on that day that Dasch in discussing the handkerchief said that it would or it could be brought out by a certain smelly fume, he could not recall the name of it. I suggested the name of ammonia and on hearing the name ammonia he advised me that it was the material which would bring out this secret writing.

CROSS EXAMINATION

Questions by Colonel Ristine:

Q Mr. Traynor, I believe on June 19, 1942, Mr. Dasch talked with you in the Bureau of Investigation over the phone, did he not?

A He did.

Q And he called you from what place?

A He said he was calling from the Mayflower Hotel in Washington, D. C.

Q And previous to that call you had no information whatever about his presence in Washington, that is correct, is it not?

A I did not.

Q And would you tell the Commission what conversation you then had over the phone with Mr. Dasch, as nearas you can recall it?

A As near as I can recall, the conversation in substance was that he identified himself first as George Davis, calling from the Mayflower Hotel. He stated he was a leader of

11b a group of eight men who had just come over from Germany and wanted to talk to someone about sabotage. He wanted to make an appointment to see me. At this time it was about 10 o'clock in the morning. He made some reference to the fact that he had just taken a shower and I suggested that I would be happy to see him at 11 o'clock in the morning. He wanted to know whether I could see him earlier and I advised him that I could see him at 10:30, if it would be convenient with him.

He indicated to me that he had placed a call to several other agencies in Washington, one of them being a Colonel Cramer of the Provost Marshal General's office, but he had not been able to reach Colonel Cramer and had left word for him to call. He wanted to know if it would be all right for him to come to see me first and I advised him that if he so desired it would be perfectly agreeable with me.

He expressed some doubt as to whether or not he could find my office when I gave him the office number, and thereon I told him that we would have an agent call for him at the Mayflower Hotel and bring him directly to my office.

Q That was done?

A Yes, sir, that was done.

Q Do you know whether Colonel Cramer was in the Military Intelligence or Provost Marshal General's?

A I have only the word of Mr. Dasch when he said he had called the Provost Marshal General's office, as I recall it.

4 QNow, when he reported to you in answer to that call, he was the first one of the group of eight now being on trial that you had seen, was he not?

A Yes, sir.

12b

Q And he was the first one to appear before the F.B.I. in any place or in any capacity, is that right?

Colonel Royall. I express an objection, just on the general ground that there is no evidence to show that this witness could possibly know that.

Colonel Ristine. I can develop the fact, I think, and show it.

Questions by Colonel Ristine:

Q The other offices are in teletype communication with the Washington office, are they not?

A Yes, sir, they are.

Q And they report immediately if anybody of the nature of a member of this group was taken into custody, they would report that fact immediately to the Washington office, would they not?

A I don't think I am able to answer that question in that form. If I might be allowed to explain?

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Q Yes, that is all right.

A It is possible that one of our offices would immediately notify the Bureau headquarters by telephone, and most likely would, but it would not necessarily mean that I would know about it. The word might not get to my particular desk for some considerable period of time, as someone else might know about it before I would see the incoming communication.

Colonel Ristine. The Attorney General has suggested to me that he has already stipulated in the record the dates upon which the various ones appeared or became--

The President (interposing). That is now in the record.

The Attorney General. As I have already stated twice, the date and time when each man was apprehended is already in the record. There is no doubt about it at all.

Colonel Ristine. If the Commission will permit me, I shall call attention to those specific dates, because I think it will be helpful in future interrogation.

The Attorney General. This is on page 476 of the record.

Colonel Ristine. Yes. George John Dasch appeared on the 19th of June, 1942.

Richard Quirin, Heinrich Harm Heinck, and Ernest Peter Burger were taken into custody on the 20th day of June.

Edward John Kerling and Werner Thiel on the 23rd of June.

Herbert J. Haupt and Hermann Neubauer on the 27th of June.

Questions by Colonel Ristine:

Q From the time of the appearance of the defendant at the office and for four or five days following, you or some of the other agents listened to or interrogated, and the defendant

o2 answered questions respecting this whole matter and other subjects, did he not?

A For the first day and three-quarters he refused to answer any questions but wanted to give the story in his own form; thereafter he answered questions that were put to him.

Q His appearance was voluntary on his part and of his own free will and accord; that is correct, is it not?

A That is correct.

Q The voluntary statement he made for the period of time which you have specified was a voluntary statement on his part; that is correct, is it not?

A That is correct.

Q His answering of questions for the next several days was all voluntarily and cheerfully done on his part; that is correct, is it not?

A That is correct.

Q He did give you detailed information with respect to the landing of his group and their activities after coming into the United States, did he not?

A He did.

Q I believe he gave you the hotel room number and address or the hotel name and the room number where Burger was staying in New York?

A At the very end of the first day he furnished that information.

Q He gave you information with respect to the other two of that same group, did he not?

A He gave me some information but no information as to where they might be located.

Q Did he know where they might be located?

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A He said he didn't know.

Q Did he tell you where you could get the information; that Burger would know where the other two were?

A He stated he thought Burger would know, as it was Burger's job to keep track of them, and that he would get the information when he got to New York City.

Q Did you appear at the hotel where Burger was staying, with the other agents who appeared there?

A I did not.

Q I take it that that information was teletyped to the New York office, and they went to Burger's room? Is that the way those matters are handled, or was that they way they were handled?

A My knowledge of how it was handled is one which I cannot testify to; I merely furnished the information to Mr. Ladd, and I believe he phoned to New York City.

Q Would that phone message carry with it the request that they be apprehended?

Colonel Royall. May it please the Commission, we shall have to object to what the phone message would carry with it; that is going a long way.

Colonel Ristine. Possibly the question was not very aptly phrased.

Colonel Royall. He said he did not give the phone message.

Questions by Colonel Ristine:

Q You were in charge of the office here at that time?

A I was merely in charge of interrogating Dasch.

Q Were you responsible for giving instructions that

04 this information be forwarded to New York?

A I was not.

Q Who handled that?

A Mr. Ladd made the telephone message.

Q Could you tell the Commission what the defendant stated to you as to the reason why he wanted to tell the whole story to you in his own way?

A He on coming to my office advised me that he had gone through considerable mental strain and hardship for the past several months; that he had a long story to tell; and that he wanted to tell it beginning at the very beginning and tell it in his own way.

Q I believe in the course of that story which he told, he told you, among other things, about his experiences in Germany?

A That is correct.

Q And about his dissatisfaction with the ruling powers in Germany?

A That is correct.

Q And that he had formulated a desire on his part to fight those powers in every way that he could?

A That is correct.

Q And that he could not fight those powers in Germany?

A That is correct.

Q And that he, therefore, had to get out of Germany by some process in order to carry out his desire to fight the ruling powers of Germany; that is correct, is it not?

A That is correct.

Q And that this method by which he entered the United

05 States was the only method that had offered itself to him to accomplish that desire to get away from Germany and into a place where he could fight the ruling powers?

A That is correct.

Q He related the circumstances of his entry and that nothing had been done after the entry to carry out any of the purposes for which the group was sent over here, did he not?

A That is correct, with the exception that they did bury the explosives, which was part of their instructions on landing, and came into the country, changed clothes, and mixed with the people.

Q Did he tell you about meeting the Coast Guardsman?

A He did.

Q And that his instructions had been, if such a contingency arose, that that person was to be overpowered and sent back to the submarine?

A He did.

Q And that he did not carry out those instructions?

A He did.

Q Did he tell you about having telephoned to the F.B.I. in New York before making the trip to Washington?

A He did.

Q Would you tell the Commission what he said about that telephone call?

A He advised me that on Sunday night, June 14, at, I believe, around eight o'clock in the evening, which was the time he called, he called the New York office, and after talking with the operator was referred to an agent.

He stated that he told this agent that he had just come

o6 from Germany and had some important information, but he refused to give the information to the agent on the telephone and refused to come up to the Bureau office in New York, although he was encouraged to do so.

He told this agent that his name was Franz Daniel Pastorius and that he wanted the New York office to notify them in Washington that he would be in Washington on Thursday or Friday next to give this information.

Q Did the New York office so notify the Washington office of the receipt of that information?

A I have never seen such a communication.

Q Would that mean that it had not been sent down or that you just had not checked in on it to see?

A May I explain in answer to that question, please?

Q Yes, that is all right.

A As I said before, communications--teletype and written communications--come into the Bureau on certain matters. They arrive at my desk for certain action. Certain other Bureau officials see them in the interim. Sometimes they would handle them. It is not possible for me to know what all comes into the Bureau headquarters.

Colonel Ristine. Mr. Attorney General, would the Bureau be willing to check in on that matter and furnish me with a copy of whatever communication was sent from New York to the Washington office?

The Attorney General. We admit that he made a call to New York.

Colonel Ristine. As related by the witness?

The Attorney General. Well, get through with the witness,

o7 and then we can look into this.

Colonel Ristine. I just do not like to be hurried along on a vital matter like this.

The Attorney General. I am not hurrying you at all. I shall look this up and discuss it with you later. I do not know anything about it. Take whatever time you need. I did not mean to hurry you, Colonel.

Questions by Colonel Ristine:

Q Did the defendant Dasch tell you of the difficulties which he went through in Germany in finding a way to get out of Germany?

A He told me of some difficulties, yes.

Q Did he tell you how dangerous it would have been if he had made a slip in his efforts to get out of Germany and they had learned of his intentions in trying to get out of Germany?

A He gave me the impression that if they had learned of those intentions, he would have been killed.

Q Summarily executed?

A That is right, sir.

Q Was the information which he furnished you and others of the F.B.I. in your presence valuable and helpful in apprehending the other seven of the group that are now here before the Commission?

A Some of the information furnished by Dasch was helpful in locating some of the defendants.

Q I believe you had previously received a report from the Coast Guard where the landing occurred with respect to what they found there; is that correct?

o8

A That is correct.

Q Insofar as Dasch related those facts, it was a duplication of information you already had?

A Generally that is true.

Q However, I wish you would tell the Commission whether you advised and informed the defendant Dasch that you had any other information, or just permitted him to give freely what information he would give.

A On Thursday, June 25, I told him the information we had received from the Coast Guard.

Q But that was the first information, as I understand it, that you divulged to him with respect to the other activities of your Department?

A That is correct.

Q So he did not know when or by what method the various ones were apprehended?

A That is correct.

Q Did he appear to you to be sincere in wanting to aid this country in giving this information to you?

The Attorney General. I object to that.

The President. Will the reporter please read the question?

The Reporter (reading):

"Question. Did he appear to you to be sincere in wanting to aid this country in giving this information to you?"

The Attorney General. I object to that. It seems to me to be objectionable. I think he should ask what Dasch said and what happened. The witness could not read Dasch's mind

09 very well.

Colonel Ristine. There was so much that was said and that happened that it would cover a multitude of territory.

The Attorney General. How can this witness possibly know whether Dasch was sincere or not sincere?

A Member. I think the question is all right.

The President. The question may be asked.

The Witness. At the time I was talking with him, he appeared to be sincere.

Questions by Colonel Ristine:

Q Did you in the course of the questioning and the information he gave tell him that you believed in him and believed him?

A I did.

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Q I believe you were present during the interrogation on the 19th and the 20th?

A I was.

Q Do you recall whether you were present after the 20th?

A I was.

Q And were you present during the entire time that he was interrogated, in so far as the document marked Defendant's A, which seems to be a document signed by Dasch, is concerned?

A With very few exceptions in the latter half of the document, I was present at all times.

Q Is that document Defendant's-A a transcript of stenographic notes that were taken at the time of the statements and interrogations, by stenographers in the F. B. I.?

A It is.

Q Are those stenographers that you used reasonably accurate in their work?

A I would like to explain that rather than to answer just yes or no, if I might.

Q You may.

A Dasch, in starting out this statement, requested the stenographers to use their own judgment in rewording and rephrasing it to make a little better English, in that he was having trouble in properly constructing the English sentences, after using German for the period of time which he had been, almost exclusively. This statement consists of a reasonable transcription of what the stenographers, who are very good stenographers, took down and transposed in order to make it in better English, wherever they thought it was desirable.

2w

He thereafter read it and approved it, initialing it.

Q I believe he signed every page as well as the concluding page, did he not?

A He did.

Q I wish you would state if you were personally present when the statements contained on pages 8 and 9 were made by Mr. Dasch (handing document to the witness). I believe that was a part of the first day's session?

A I was.

Q Does this document and those pages correctly set out the statements which he made on those pages?

A It does.

Colonel Ristine. If the Commission please, I would like to read those pages (reading):

"For the last fifteen years I have been opposed to the Nazi movement in principle."

It might be, since I read four paragraphs of this--

The President. Is this the same question that you have already asked the former witness?

Colonel Ristine. I read four paragraphs to the other witness, so that those four are in the record; but since he was not personally present, that was stricken out. If I might consider that that portion is read now, I can read three more paragraphs and not duplicate the matter.

The President. In order to identify it to the witness?

Colonel Ristine. Yes, sir. The witness has already identified these statements as having been made in his presence and as being correctly transcribed. I do not like to be tedious.

The President. I do not see any objection to that. The

3w members of the Commission are cognizant of the other reading; and if there is no objection on the part of the members of the Commission or of counsel, you may go ahead on a shorter line.

Colonel Royall. We do not object to that form of procedure, but we still have our objection.

Colonel Ristine (reading):

"In 1938 I had a chance to study the tactics of the Bund in the City of New York. The husband of my cousin, Rheinhold Bart, who was at that time employed at the Long Island Railroad as a technician, was at the same time a leading member of the Bund. He approached me and tried to persuade me to become a member of the Bund for he reasoned that I could be valuable to them. I argued that I would have to investigate the organization before I reached a decision. I went to two or three different meetings, one of them at Madison Square Garden and the other one at the Westchester County Auditorium. During that time I had ample opportunity to study their tactics. I expressed myself to Rheinhold Bart in the following way:

"I reasoned that the whole Nazi set-up was first contrary to the Constitution of the United States for it bred race hatred; second, it professed to be a political organization although the majority of its members were non-citizens of this country and as such did not have the right of political participation; third, indications were that it was under the control or direction of the Nazi regime in Germany. I argued at that time that this organization was destroying and undermining the splendid record the German immigrants, ever since the

4w

first one landed, have established in this country, and at the same time laying the basis for successful English propaganda.

"Before the creation of the Bund in this country we had numerous societies for German-Americans such as the Steuben Society, the Turner Bund and various others, but they were in fact Americans first. They were in most part benevolent organizations with also the purpose of 'keeping the home fires burning.' When the Bund was created, they forced those organizations either to join the new friends of Germany or dissolve.

"It was the intention of my mother to remain in this country for six months. At that time when I had been with her, she told me of the possibility of a non-aggression pact between Germany and Russia. I argued that such a thing was impossible for Hitler attacked Russia and Communism as his arch-enemy. When sometime in August the news came over the radio that this non-aggression pact between Russia and Germany was signed, I told my mother about it. She became very excited and told us to get her papers ready and book her passage to return to Germany because, to use her words, 'this means war.' To our sorrow she sailed on or about the 24th of August, 1939, on board the Hamburg-American line steamer at New York. She arrived in Germany three days after the war. The boat was forced to take the most northern route along the Norwegian coast."

Q Would you tell us whether page 95 was stated in your presence? You might look at the bottom of page 94 also.

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The paragraph that I am particularly interested in is the first full paragraph, which is just four lines at the top of page 95 which deals with Neil Stebbins.

Was that statement made by Dasch in your presence?

A It was.

Colonel Ristine. I would like to read that four-line statement, if the Commission please. (Reading):

"Neil Stebbins was his name, from San Francisco. That is the guy I told in Tokyo last year, 'If I come to Germany and I find out that Hitler and his gang are not carrying on for the benefit of the majority of the people, I shall fight him and I will find a way to do it.'"

Q I show you the last paragraph, particularly, on page 32. Was that statement made in your presence?

A It was.

Colonel Ristine (reading):

"The school ended on the 30th of April. All of us were given 12 days vacation with the exception of Kelly and myself. We had to report back to Berlin on May 11, the purpose of which was to go to the Chemical department of the High Command to receive additional instructions on secret ink writing. On the second day we jotted down different addresses on handkerchiefs, one of which is in my possession now. Lieutenant Kappe bothered the hell out of me to give him some reliable address in the United States through which he could always reach me. In my life story I put down that I had a brother in America. My brother, Ernst Dasch, came to the United States in August, 1930, and has resided in New York City ever since. He is married to an American girl and has

6w

been a citizen since 1936. To my best recollection he is employed at present as a machinist at some dock yard in the City of New York. In my fictitious story to Lieutenant Kappe I stated that my little brother was a Civil Service employee at present employed at the submarine base in New London, Connecticut, and that his address would be Pelham Road (I cannot recall the exact number now), New London, Connecticut. This is one address at which Kelly could always find me in case we should lose contact."

Q Did he explain to you that he had purposely given a false address to Kappe, as stated here?

A He did.

Q Do you know the correct address of his brother?

A I do not.

Q Do you know whether this address as given here as incorrect was in fact incorrect?

A I do not.

Colonel Ristine. If the Commission please, I have to refer to the copy which I had, which was an uncorrected copy, and it takes a little time. I am sorry that it takes that length of time.

Questions by Colonel Ristine:

Q Will you look at page 35 and page 36, beginning "I found that the majority," and so forth, and see if that statement was made in your presence?

A It was.

Colonel Ristine (reading):

"I found that the majority of the workers employed at all plants were either prisoners of war or German

7w

military prisoners or Russians who came to Germany of their own free will. I asked at the luncheon of the manager of the aluminum plant what he understands as 'free will' because I saw too many guards around and I asked him how are they being employed, how are they doing. So he explained to me that the Russian workers came from the Ukraine and were forced either by economic insecurity or under threat of intimidation or by other typical Nazi methods to go free to Germany. There many of them had their wives along but their wives lived separately in different barracks. I asked the man, 'Are the married men able to see their wives?' 'How much money do they receive?' He answered the following: 'They earn the average amount like any other civil worker, which is about 35 marks a week. Out of this amount the German government takes out 20 marks weekly as Russian tax. Outside of that, their money on food and lodgings and barracks has to be taken out of it. So, they receive between 5 and 8 marks a week.' I asked him if they could buy beer or cigarettes with that money. He said they cannot buy anything except with coupons and those coupons they can only receive if they deliver good work. As to the question of visiting their wives, he told me that only those which delivered good work are able to see their wives and if the wives are employed in a nearby match factoryand the women are able to see their husbands only if they produce good work and vice versa. Furthermore, the Russians are brought under guard from their camp near by by means of a little spur railroad to the plant and at night are brought back under guard. After I heard that story, I made an addition in my mind and the result was slavery as only the Nazis can

8w

make it. The same working conditions I also had a chance to witness on the visit to the railroad yards. There I asked a foreman, 'How are those poor peoplekeeping alive? They appear to me to be starved.' He said, 'To hell with them. They drop down just like flies.' I noticed a bunch of young people who could not have been older than 15 or 16 years, also the weather was not cold, and all of them were wearing heavy fur pieces and when I asked why they were doing it, I was told by a German, 'Well, them dirty bums, they wear everything they possess. They go to bed with it and they go to work with it.'"

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Golding
fis
Wilfong
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Questions by Colonel Ristine:

Q On page 51, the last paragraph, and the following page.

A The whole page, sir?

Q Yes. It is just part of the page, but it is all that is on it. State whether those statements were made in your presence.

A It was.

(At this point the Attorney General left the room, with the permission of the Commission, requesting that the examination be continued in his absence.)

Colonel Ristine (reading).

"On Sunday night I told Pete Burger that it was absolutely necessary for me to get in touch with the F.B.I. because I reasoned that in case any one of the other seven boys or even myself should happen to fall into the hands of the police, it would be very difficult for me to prove the real reason why I came here. Therefore I called up the F.B.I. after I had gotten the telephone number out of the telephone book. I went to a hotel lobby between Fifty-Second or Fifty-Third Street and the corner of Madison Avenue and called up the F.B.I. The first person who answered the phone asked me what I wanted. I asked him whether he was able to take a statement and he told me he would connect me with an agent. When this man answered, I told him I would like to make a statement. I told him I was a German citizen and had arrived in this country only yesterday morning. Thereafter he asked my name so I thought I would use the pass-

2b

word name, which incorporated the whole idea, namely, Franz Daniel Posterious. I spelled my name slowly to the officer, whereafter he asked me to get in contact with him at his office. I told him that I believed my case was so big that only Washington would be the right place to spring it, and that in my own little mind the only person who should hear it first would be John Edgar Hoover. Again he begged me to come down and see him, but I told him nothing doing and asked him to take the following message: 'I, Franz Daniel Posterious, shall try to get in contact with your Washington office this coming week, either on Thursday or Friday, and that you should notify the Washington office of this fact.' I told him that I was about 40 years of age, after he asked me who I was, and that I had a little gray in my temples. I heard him repeat what I told him in the message, and mentioned the exact date and time when the message was handled.

"Pete Burger in the meantime had been waiting for me outside and when I came out and told him what I had done, he was very much satisfied because he understood the magnitude of this undertaking. It was a check and recheck."

(At this point the Attorney General returned to the courtroom.)

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Questions by Colonel Ristine:

Q Page 22, the first three sentences of that top paragraph; state if that statement was made to you on that occasion.

A It was.

Colonel Ristine (reading):

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"After it became clear to me that this whole set-up of Naziism has to be fought, I had to find a way to do it. In the country itself I was unable to do any effective work. So therefore I had to find a way to leave the country."

Questions by Colonel Ristine:

Q Now, I believe Mr. Dasch also told you that when he arrived at the station the morning immediately following the entry, he looked at a restaurant sign and debated on whether he should go immediately into the restaurant and call the F.B.I. or whether he should defer it, and he decided, for fear the others might learn of his intentions if he made that call, not to make it at that time.

A He did.

Q Now, the last question on page 129 and the answer on the following page. State if that question was asked and that answer given in the interrogation.

A I was not present when this question was asked.

Q Does it give the names of the officers who were present? Mr. Johnstone asked that question.

A Mr. Johnstone asked that question. There is a notation there that I had left the room just prior to that time.

Q Was there any other agent present at that time, or do you know?

A I believe that Special Agent Wills was present at that time.

The President. Will the counsel pause a moment while I consult both sides as to their wishes as to adjournment?

The Commission is ready to continue sitting. However,

4b

we know that there might be possibilities of needful time on either side, possibly outside of the courtroom. Have either of you any recommendation? You remember, it was considered routine to adjourn at 4:30. However, there have been several times that we have sat without regard to hours and the Commission is ready to do it again. We would like to hear your opinion of that. I would also ask General Cox as to what might be called housekeeping arrangements that have to be made.

General Cox. It is all right, sir. It is all right to go right ahead.

The Attorney General. Colonel Ristine says he thinks he could finish with this witness at least by 5 o'clock.

Colonel Royall. Any arrangement that is made is satisfactory to us.

Colonel Ristine. I think I could finish by 5.

The President. Suppose we conclude for the present that we will sit until this present witness is finished or at least until 5 o'clock. Proceed, please.

Questions by Colonel Ristine:

Q Mr. Traynor, with respect to the names and addresses on the handkerchief, I believe Mr. Dasch told you that he did not remember the names and addresses on the handkerchief, is that correct?

A That is correct.

Q And that at least as to one of the addresses it was a false address, an incorrect address; that was the address with respect to his brother?

A May I explain my answer to that question, sir?

Q Oh, yes.

5b

A He told me that on his handkerchief all of the addresses were correct, but that on Kerling's handkerchief there was a phony address of his brother.

Q Then I take it his brother's name did not appear on his handkerchief.

A That is correct.

Q And I believe he was not interested enough in those addresses to even be able to tell you for sure how to even bring them out, is that correct?

A That is what he said.

Colonel Ristine. I believe that concludes the cross-examination, if it please the Commission. Wait just one moment.

Questions by Colonel Ristine:

Q I hand you Defendant's Exhibit C-1, consisting of two photostatic pages, and C-2, consisting of two photostatic pages, which seem to be stapled together, and ask you to tell me, if you will, what those are.

A I have no knowledge of these exhibits.

Q Now, do you recall spending the first night with Mr. Dasch at the hotel where he was living?

A I do.

Q And do you recall his showing you any money, and, if so, what?

A On that evening he showed me a brief bag or briefcase containing what he said was eighty thousand dollars in money in fifty-dollar denominations. He exhibited to me three large Manila envelopes, I believe, in which he had certain sums of money marked on the outside thereof. I think the total was

something like $82,350, according to his figures. He also showed me one small envelope, white, in which he had marked on the outside that this envelope contained a thousand dollars.

Q And was there another envelope in the briefcase?

A My recollection at the present time is that there were three large ones and one small envelope.

Q Was there another envelope with writing on it or over it?

A I do not recall such an envelope at the present time.

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Q Just to refresh your recollection, was there a memorandum in there setting forth the various amounts that had been given to him with a statement that this money he had taken in order to fight them?

A There was written on something--I am not certain as to what it was--a statement of similar content.

Q The defendant Dasch was taken into protective custody and remained in protective custody, I believe, for some days thereafter?

A That is correct.

Q That was for his protection?

A It was.

Q Was the waiver which the defendant Dasch was requested to sign respecting the transfer to New York changed, or do you know about that? Tell the Commission about it, as to why it was changed.

A A waiver of removal and custody was drawn up and shown to Mr. Dasch, and he objected to the wording of it. I don't know that I can give the exact wording that he objected to from memory, but it had something to the effect "to be held in connection with any Federal crime," or some similar words. He objected to that phraseology, and it was changed with his consent and agreement to read: "Held in connection with any crime in connection with my landing in this country."

Q Do you think that probably it was just changed to "held in connection with his landing in New York," and no crime mentioned?

A It is my recollection that the word "crime" is mentioned.

Colonel Ristine. I assume that that document is in the

o2 possession of the F.B.I. and can be produced?

The Attorney General. We have it here and will produce it at any time you want it.

Colonel Ristine. If it is handy, we might like to look at it right now.

The Attorney General. We will send for it.

(The Attorney General handed papers to Colonel Ristine.)

Colonel Ristine. If you want to offer these as part of your evidence, I have no objection; but at the present time I would not want to offer anything as part of my evidence, because it would not be appropriate to do so.

The Attorney General. If you desire, I shall have them marked as prosecution exhibits and introduced now. Will that be all right?

The President. They are, I suppose, not offered in evidence?

The Attorney General. We are just marking them. They are waivers.

(3 waivers were marked as Exhibits P-116, P117, and P-118 for identification.)

Colonel Royall. May I see them first?

(The papers were handed to Colonel Royall.)

Questions by Colonel Ristine:

Q I hand you the one which apparently was corrected, Exhibit P-118, and ask you to state if it is not corrected so that the word "criminal" is eliminated.

A I have no knowledge of this exhibit. It was dated in New York on July 3, 1942. I was not there.

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The Attorney General. I will offer these now, if you like, to get them in. May I do that?

Colonel Ristine. That is all right.

The Attorney General. I will offer the three exhibits, P-116, P-117, and P-118, in evidence. They all speak for themselves.

(Exhibits P-116, P-117, and P-118 were offered in evidence.)

Colonel Ristine. I just want to call the Commission's attention to the fact with respect to Exhibit P-118 that the word "criminal" has been eliminated. Also, if the Commission would like to see the other two, I will hand them up.

The President. Please do.

The Attorney General. May I point out to the Commission that in one of them the words "criminal charge" are deleted and that they appear in the other two exhibits?

Colonel Ristine. That is all.

Colonel Royall. The other seven defendants do not desire to cross-examine this witness.

The Attorney General. Would the Commission permit me to ask one or two other questions?

The President. Yes.

REDIRECT EXAMINATION

Questions by the Attorney General:

Q Please turn to page 166, about three-quarters of the way down the page.

"Question. The tours are finished?"

Do you see that?

A Yes, sir.

Q From that question, continuing through that page and

e4 through pages 167 and 168 to a point halfway down page 168:

"Question. Do you think if he goes to New York he will contact the guy in Astoria?"

Were those questions and answers made in your presence?

Colonel Ristine. If the Commission please, we object to the prosecution's using this document in that manner, because they declined to use the document in the first instance and elected to prove their case by the recollection of a witness who was present. If they had offered this document, they would have been obliged to have the whole of the document in. They cannot now offer it piecemeal because in the original instance they could not have offered it except as a total document. We insist, as the saying is, that "They can't eat their cake and have it too." Having elected to put their case in on the recollection of the witness as to what was said, that of necessity permitted us to refer to such matters as we thought were necessary in explanation of them. But that does not permit them now to do something which originally they could not do, namely, offer a part of this entire document as their evidence.

The Attorney General. Let us just see what the situation is. This witness was asked to identify a handkerchief. That was the only direct question I asked him. Then counsel for the defendant opened up the whole question of whether he recollected certain specific things out of a statement. I did not object to that, though it did not seem to me to be appropriate cross-examination on the matter of the handkerchief.

Clearly the cross-examination now permits me to ask whether or not the defendant in the presence of this witness did

05 not say certain things bearing on the exhibit which counsel for the defendant has referred to and has opened up as part of his cross-examination. He has opened it up; I have not opened it up. He has opened up the whole thing.

Colonel Ristine. If the Commission please, I insist that they cannot cross-examine their own witness. There is only one side that can cross-examine a prosecution witness, and that side is the defense. I did not improperly cross-examine this witness with respect to any matter; I confined my cross-examination to matters which pertained to the examination of the prosecution in chief. The prosecution cannot by any process cross-examine this witness.

The Attorney General. No, I do not propose to cross-examine at all. I propose to ask him the direct question whether or not the defendant did not state certain things in his presence.

Colonel Ristine. I insist that they cannot now use the document in order to get in an isolated part of it which they could not have got in in their original examination. If they had offered any part of this document originally, it would have been necessary to offer it all; and having elected not to offer it, they have precluded themselves from using it at all.

The Attorney General. I take it that this is true: I produced the witness solely to testify about the handkerchief. Technically speaking, there could have been no cross-examination on other matters. However, I permitted counsel for the defendant to cross-examine the witness on a great deal of other material. He having opened the examination on that material, I cannot see how he can now have me excluded from

o6 the same privilege. I am simply asking the witness whether or not certain statements were made to him by Dasch, on exactly the same basis Colonel Ristine asked him; there is no difference at all. There is no cross-examination about it.

Colonel Royall. If counsel are finished, the other defendants would like to say a word.

The President. Colonel Royall.

Colonel Royall. May it please the Commission, I do not know of a better illustration of the practical injustice of admitting confessions against people who are not parties to them. Not only is that true in this particular case, but it brings up also the violation of another rule which inures to the benefit of the other defendants.

Under the stipulation which we have had, we have not objected to each question that was asked this witness as to declarations of Dasch. Now, however, we find ourselves in a position where the Attorney General wants to use the conduct of the defendant Dasch in eliciting testimony as a means of bringing out additional testimony which relates largely to another defendant, when he could not have brought that out against the other defendant, even if it were otherwise competent, without putting in the entire instrument. Do I make myself clear?

In the first place, we reiterate our view that none of these confessions or statements of Dasch is competent against the other defendants; but even if they were, it would be incumbent upon the prosecution in offering them to offer the entire confessions as against us.

He now says that he can offer part of it merely because

o7 Dasch's counsel has put in another part. Therefore, the offer of the prosecution in this case is doubly objectionable: both because he has got to offer all, if he offers any, and for the reason, which we have insisted on all along, that a man cannot be convicted by the hearsay statements of another.

On those two grounds we respectfully object to this testimony that is attempted to be offered.

The Attorney General. The Manual has been called to my attention in connection with this matter. I am reading now from page 127 of the Manual. It appears to be under sub-heading B of section 121. I read:

"Ordinarily the redirect examination will be confined to matters brought out on the cross-examination, and the recross-examination will be confined to matters brought out on the redirect examination."

So I think that even under the Manual this is clearly admissible.

As to the objection of Colonel Royall, I think that could be dealt with separately. If I am right, this is admissible as against Dasch; and if it is admitted as to Dasch, the Commission can then rule whether it should or should not affect the other defendants. It seems to me the rule would be the same.

Colonel Royall. I should like to make this one additional remark. The very passage the Attorney General read from the Court-Martial Manual illustrates our position. We have not cross-examined the witness; therefore, this provision of the Manual cannot be used as a reason for introducing this evidence as against us. That is the sole basis upon which it would be competent.

o8 It is also an excellent illustration of the wisdom on our part of not cross-examining on any of these matters.

Colonel Ristine. If the Commission please, I do not now know whether the testimony the Attorney General is attempting to elicit is against Dasch or against the other defendants, but I do know that the principle involved is wrong, that principle being that if the Attorney General wanted that particular part of that written document in evidence before this Commission, the only way he could have gotten it before the Commission was to offer the entire document. He elected not to do that, although I asked that it be done. He having elected not to do that but to trust to the recollection of a witness as to the statement, that opened up the matter, according to the Court-Martial Manual, and permitted the other side to offer such additional parts of this alleged conversation or confession or statement as we thought were necessary to enlighten the Commission. But because we did that, that does not do away with the fundamental rule that if they want to offer that document or any part of it, they must offer it all. That is true whether they do it in the first instance or in the redirect examination of their witness.

The Attorney General. In other words, the position of Colonel Ristine is that he can offer any part of the confession without any objection but that I cannot.

Colonel Ristine. That is correct.

The Attorney General. Colonel Ristine having opened this on cross-examination, it seems to me to be an elementary law of evidence that where one counsel opened a subject not appropriate to cross-examination and the other side did not object, clearly that subject is then open to examination by the

09 first counsel. That is elementary.

The President. Does that go to the substance or to the particular point brought up? For instance, I should like to be enlightened on these things. The defense counsel poses certain questions and uses the statements in this exhibit to refresh the mind of the witness. Is that what you propose to do also?

The Attorney General. Yes.

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The Attorney General. Yes. It is that, and that is all.

The President. You are not making any statement of the nature of the parts?

The Attorney General. My question, subject to ruling, is, Will you look at these pages and see whether or not they represent what the defendant said to you?

That is the first question. If he says, "Yes; that is what Dasch told me," I will then say, "Will you read it, or tell us what he told you?"--just the way Colonel Ristine did. I do not propose to do anything different.

Colonel Ristine. If the Commission please, I do not want to be technical, but I am still insisting that the prosecution cannot do now what, under the rules of procedure, they could not do with that document in the first instance. They could not use that document in the first instance except as an entirety; and I did my best to get them to so use it, and they declined to do it. I elected to use it for the purpose of introducing evidence explanatory of what they elected to stand on as my client's confession. But they cannot now go back to the same document and do that which they were forbidden to do with that document in the first instance.

The President. Is there anything further on this point?

A Member. What the Attorney General wishes to do now is to ask redirect questions with reference to what was brought out. Is not that the idea?

The Attorney General. I propose to ask the witness, first, if Dasch told him the material contained in certain pages, and then I propose to ask him what that was.

A Member. Is that redirect examination in the strict sense of the term?

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The President. That is what I was trying to determine, whether it was the substance, or just a mere questioning on something that has already been used in cross-examination.

The Attorney General. I think it is particularly redirect, Mr. President, because the witness was called with reference to the handkerchief, and all of this material goes to the handkerchief. It is very definitely redirect. It goes to an explanation of what appeared to be the only handkerchief made by the defendant Dasch. That is the very purpose for which we called the witness. It does not at all go into outside material. It is direct substance and direct examination.

The President. With that explanation do you still, Colonel Ristine, object to this questioning?

Colonel Ristine. Yes, if the Commission please. This witness was asked about the handkerchief. The handkerchief was exhibited before him, and in the giving of his testimony from his recollection he ruled out much of the testimony that is in the confession, the written confession. However, they did not offer it as a part of that written confession, because if they had, then it would be necessary, if they wanted that part in, to put the whole of the document in.

The mere fact that I in cross-examination of this witness, as well as the other one, read certain parts which I considered necessary in order for a correct understanding of what this witness originally testified to from his oral recollection, does not open up this document so that the prosecution can now do that which under the law they were forbidden to do in the first instance, namely, to offer a part of the long

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The Attorney General. I do not think I shall. But may I try it a little differently and see if it meets the objection?

The President. Proceed.

Questions by the Attorney General:

Q Did the witness Dasch say anything to you about the writing on the handkerchief?

Colonel Royall. I object.

Q Say whether he said it or not. Without answering what he said, did he tell you anything about what was written on the handkerchief?

A He did.

Q Do you remember what he said to you?

Colonel Royall. May it please the Commission, if this started out as if it were an original examinationón the entire matter of what was said, then we are protected by the rule that he has got to put in the whole confession, if he puts in anything. So far as we are concerned, we have not waived anything. We have not cross-examined. As far as the other defendants are concerned, this witness having testified that he was present substantially all the time that the statement was taken, with few exceptions which have been noted, and it having been reduced to writing, and that being the signed confession to which he refers and to which he has already referred, then as far as we are concerned, if any of it is competent he has got to introduce every word of it, because we have not waived anything.

We reiterate again that no part of it is competent against us, because it is nothing in the world but hearsay.

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complete document which is written and signed.

The President. Colonel Royall, will you give us your opinion on this point?

Colonel Royall. Well, sir, the question of whether it is admissible as against the defendant Dasch is an argument with which the other defendants are not concerned. The basis upon which the Attorney General says it is admissible against the defendant Dasch is that the defendant Dasch is cross-examined about some matter relating thereto. That consideration does not apply to the other defendants. We have not cross-examined about anything, and there is no conceivable way in which it could be made admissible as to us.

The Attorney General, I am sure, would admit that as an original proposition this question would not have been proper against any defendant but for the cross-examination of Colonel Ristine. We have not cross-examined. Therefore it certainly is not made competent as to us.

That ground is in addition to the general objection we have that these matters are all hearsay as to us. Everything they have got is hearsay as to us. It is what somebody said that Dasch said and, in some instances, it is what somebody said Dasch said somebody else said.

The President. Would it not be possible to interrogate this witness, Mr. Attorney General, as you have interrogated Mr. Wills, and bring out the points you wish to make?

The Attorney General. I will try to do that, Mr. President.

The President. Without taking advantage of, say, a technicality?

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A statement made by an alleged co-conspirator, after he himself says his conspiracy had ceased and he was cooperating with the F.B.I. in its detection, could not be in furtherance of any conspiracy, on the statement of this agent himself who says he thinks Dasch was sincere in cooperating with the F.B.I.; and therefore no part of this evidence, however it is asked, could possibly be competent against the other defendants.

I have said all that I can say about it. That is our view. Of course we are subject to the Commission's ruling.

Colonel Ristine. If the Commission please, on behalf of my client I want it made perfectly clear that we do not now object and never have objected to having every particle of that confession read to the Commission. That was ourdesire in the first instance, because we believed that the transcript of the notes of the stenographers would give the picture better and more accurately than any recollection of any witness, and it would give everything that was said so that you could understand it intelligently, and if anything was said in favor of the defendant you would understand how and why.

We do not now object to the whole of it being offered and read.

The President. Against what does your objection lie? There has been no proposition to introduce it, I take it.

Colonel Ristine. But there is an effort now, if the Commission please, to offer in evidence two or three pages of it without offering the whole.

The Attorney General. I beg your pardon; there is no such effort. I withdrew the question and asked another question. The President suggested that I draw my question in a

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different way, which I did.

Colonel Ristine. I beg the Commission's pardon. I withdraw my objection.

Questions by the Attorney General:

Q What did the defendant Dasch say to you with respect to what was written on the handkerchief?

Colonel Royall. I object.

The Attorney General. As to Colonel Royall's objection, you have ruled on both aspects of it: first, with respect to the admission of the confession against the other defendants you have already ruled; secondly, with respect to the objection that a portion of the confession should not be shown. That has been ruled on already by permitting the witness Wills to testify with respect to what Dasch told him, although the confession was not in the record. So I take it that Colonel Royall is simply recording his previous objection which has already been ruled on.

Colonel Royall. There is a distinction between this witness and the witness Wills. This witness expressly stated that he was there for part and was not there for the other part, and there was a very definite dividing line. This gentleman was present, with few exceptions, throughout the entire confession, as I understood it, and was participating to a large extent, or to some extent, in the transcription and reduction to writing and the signature. So the cases are not alike.

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The President. Any further discussion?

The Attorney General. No, Mr. President.

A Member. I do not know whether Colonel Ristine has an objection to that or not.

Colonel Ristine. I announced I have no objection to the question at present.

The President. Perhaps we should have the question repeated. I think the Attorney General has a very good memory, better than I have. You might repeat it.

The Attorney General. I think the question was: What did the defendant Dasch say to you with respect to what was written on the handkerchief?

Colonel Royall. The other defendants object.

The President. He may answer the question, as I understand the present state of affairs.

Colonel Royall. May I say it is not redirect as to us, because we have not crossed.

A Member. We are not talking about you now. We are talking about Colonel Ristine at the present time and the question is that several questions have been asked, direct questions, on cross-examination, and there is a rule with reference to questions that have been asked in that way and the rule seems to be applicable here, especially if there is no objection made.

The President. Anything further from the Attorney General? Were you about to make other remarks?

The Attorney General. No.

The President. Subject to any objection by the members of the Commission, the Commission has no objection to the

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question being asked and answered.

Question by the Attorney General:

Q Will you answer the question.

A Dasch informed me that on the handkerchief which he had was the name and address of a person in Lisbon, Portugal, with whom he had been instructed to communicate in case they needed more money, in case they desired to communicate any intelligence, information, such as what papers a succeeding group would need in order to effect a landing and mix with the populace without detection, in case they needed more explosive material sent over,- anything of that nature could be communicated to this address.

In addition, on this handkerchief he advised me there was the name of a Lutheran minister who, he stated, was either in Newark or Elizabeth, New Jersey, and who they were to contact by use of the code phrase "Franz Daniel Pastorius." He was to say, "Greetings from Franz Daniel" and this man was to answer "Pastorius."

He also had the name and address of an individual in Chicago who was a relative of Herbert Haupt.

In addition to that, he had an address on the handkerchief of a person through whom he could always get in contact with Edward Kerling.

He also had on the handkerchief the name "Franz Daniel Pastorius."

After the writing on the handkerchief had been developed a photograph was made of this writing and I then discussed it--

Colonel Royall. May it please the Commission, he has not been asked anything about that at all. He was asked what Dasch

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said.

The Attorney General. He was going to say he discussed it with Dasch, I presume.

Colonel Royall. But he is telling other facts about which no inquiry has been developed.

The Attorney General. I will direct the inquiry then.

Questions by the Attorney General:

Q Did you discuss the photograph with Dasch?

A I did.

Q What did he say about it?

A This photograph was the photograph of the writing on the hankerchief. The first thing that appeared on the handkerchief, which he had not mentioned to me, was the name Bingo. I questioned him as to what he meant by Bingo. He advised that that was the German Intelligence name of Herbert Haupt, that each man assigned to the German Intelligence Unit was given a name. Haupt's Intelligence name was Bingo. His own name, he stated, was Strich, which means a short dash.

I then asked him about the other writing. The writing was not clear. It was not readily discernible from the photograph and we attempted to figure out the names and addresses. He could not figure out the name and address correctly of the address in Portugal. He stated that the address, as I now recall, as being for the Lutheran minister, was Rahway, New Jersey, rather than Elizabeth or Newark, as he first told us. He advised that this man's name that appears on there was Carl Krepper.

He also stated that the other name, the contact in Chicago, Walter Froehling, was an address which he stated was a relative

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of Herbert Haupt, who was a member of the German-American Bund, who was an individual who they could use to locate for them a hiding place for their explosives, a contact, so to speak, a name which was furnished by Haupt.

There was also the name of Helmut Leiner, who he stated was a friend of Kerling's, with whom he could always contact and locate Kerling, this place being up in Astoria, Long Island.

Q I show you a photograph marked for identification P-119 and ask you if this is the photograph you have been referring to.

A That is a photograph similar to the one I had.

Q A photograph of the handkerchief?

A It is.

The President. Is it introduced in evidence?

The Attorney General. Yes, I introduce it in evidence now.

Colonel Royall. I assume that our stipulation covers that.

The Attorney General. Yes.

Colonel Royall. The defendants other than Dasch specifically object.

The Attorney General. Those are all the questions I have to ask this witness.

Colonel Ristine. I would like to ask one or two further questions.

The President. Proceed.

RECROSS EXAMINATION

Questions by Colonel Ristine:

Q Mr. Traynor, in addition to the information given

by Mr. Dasch with respect to the subject matter that we have already covered, he did give you a lot of information respecting the construction and operation of the submarine he came over on, didn't he?

A He did.

Q And a lot of information concerning proposed sabotage of the Panama Canal?

A I recall very little information, merely mostly a mention that there may be an attempt at the Panama Canal.

Q The other matters of interest to the F.B.I. about which you interrogated him, he did give you information about, in addition to those that have been detailed?

A I am not quite sure that I understand that question, sir.

Q With respect to other matters about which the F.B.I. desired information and about which they interrogated him, he gave you freely all of the information he had within his knowledge?

A He gave us all the information that--that is not the right answer. I cannot answer whether he gave all the information within his knowledge. He did give us information on matters on which we interrogated him.

Q I mean other matters besides those that we have gone into in some detail.

A That is correct.

Colonel Ristine. I think that is all.

Colonel Royall. The other defendants do not desire to cross-examine this witness, relying upon the position they have taken.

6b

The Attorney General. I have finished with the witness, Mr. President.

The President. Any questions by the Commission? There seem to be none.

It is now 5:26 and the Commission will stand adjourned until 10 o'clock tomorrow morning.

(At 5:26 o'clock p.m., an adjournment was taken on Monday, July 13, 1942, to 10 o'clock a.m. Tuesday, July 14, 1942.)

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